Office-Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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82-1310

No.____

IN THE

Supreme Court of the United States

October Term, 1982

Cecil Levern Humphries, Petitioner,

v.

The State of South Carolina, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

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PRESS OF STRICKLIN PRINTING COMPANY, INC. FLORENCE, SOUTH CAROLINA

QUESTION PRESENTED

Where the trial judge fails to hold an in-camera hearing to determine the admissibility of certain uncounseled confessions obtained in violation of *Miranda v. Arizona,* and where the prosecution fails to lay the proper foundation for the admissibility of these statements in the State's case in reply for impeachment purposes, have the defendant's rights under the Fifth Amendment of the United States Constitution been violated?

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JURISDICTIONAL STATEMENT

Jurisdiction to entertain the petition for writ of certiorari is founded upon 28 U.S.C.A. 1257 (3) as it is claimed that the petitioner's rights guaranteed by the Fifth Amendment of the United States Constitution were violated by the respondent at trial.

On October 9, 1981, a state court jury in Florence County, South Carolina, convicted the petitioner on a two count indictment charging him with conspiracy to possess marijuana with intent to distribute and with possession of marijuana with intent to distribute. A timely appeal raising the petitioner's claim that his constitutional rights had been violated was taken from that verdict and the South Carolina Supreme Court upheld the conviction by its opinion dated November 9; 1982. Thereafter, a petition for rehearing was filed in the South Carolina Supreme Court and by its order dated December 7, 1982, denied the rehearing request.

CITATION OF AUTHORITIES

United States Constitutional Provisions
Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Statutes
Title 28 USC 1257

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, whereas drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Rules of the Supreme Court
of the United States
Rule 17

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or

has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law or writ of certiorari.

STATEMENT OF THE CASE

The petitioner was indicted by a Florence county, South Carolina Grand Jury for conspiracy to possess marijuana with the intent to distribute and with possession of marijuana with intent to distribute.

On October 7, 1981, a jury was empaneled in the Court of General Sessions to try the petitioner. At trial, the petitioner was represented by other counsel, T. Kenneth Summerford, Esquire. During the course of the trial, the State sought to prove that on the evening of August 12, 1981, at approximately nine o'clock p.m., the petitioner, along with a co-defendant, Gregory A. Hughes, sold a quantity of marijuana to another individual named Phil Culbertson.

According to the testimony of law enforcement officers Randy Propps and Pat Bower, the co-defendant, Gregory A. Hughes, was first seen by them riding a motorcycle into the parking lot of an automobile dealership in Florence County, South Carolina, on the evening of the alleged offense. Within several minutes after leaving the parking lot, Hughes returned on his motorcycle with a passenger, the petitioner. Between the two was seen a brown paper bag ostensibly containing the marijuana.

After Hughes and the petitioner arrived, they were met by Phil Culbertson who then took possession of the brown paper bag from the Hughes defendant. After this exchange, the undercover officers emerged from locations near the premises and placed the petitioner and Hughes under arrest.

While at the scene, the petitioner allegedly confessed to the crime and this confession was sought to be introduced at trial by the State. The petitioner's attorney objected to its use at trial claiming that the confession had been obtained in violation of *Miranda v. Arizona.*[1] (Appendix B) After an in-camera hearing, the trial judge allowed Officer Propps to testify to the substance of the petitioner's confession as no

[1]384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966)

written statement had been obtained. (Appendix B) The prosecution continued with the presentation of its case in chief and offered the testimony of Officer Bowers, the other alleged eye-witness to the transaction, and the testimony of Officer William D. Tisdale, a deputy sheriff who identified the substance taken at the scene as being marijuana. Afterwards, the State rested its case.

The petitioner then testified in his own behalf. During direct examination, the petitioner testified that he had come into Florence from his home in Prospect, South Carolina, a rural section of Florence County, to buy some parts for the rear end of a 1070 Case tractor, which was used in his father's farming operations. (Appendix D) His father had given him eight hundred dollars to make this purchase. After picking up the spare parts, the petitioner then intended to remain overnight in Florence so that he could visit his steady girlfriend, Kim Keels. The petitioner's fellow farmworker, Junior Edwards, who had accompanied him to Florence, returned to the farm that same day in the pick-up truck which they had driven.

That afternoon, the petitioner called his girlfriend from the Sheraton Motor Inn, which is located on the outskirts of Florence. He remained there to go swimming and was expecting a local friend, John McColl, to meet him there and later provide him with transportation to Florence. Waiting for approximately three hours for his friend to arrive, the petitioner called McColl's wife and learned that he had not yet returned home from work. Having grown tired of waiting for his friend and transportation into town, the petitioner began walking and left the motel about seven o'clock p.m. for his girlfriend's residence.

While walking to Florence, the petitioner stopped at a pay telephone to again place a call to John McColl. McColl was not a home so he continued walking. Shortly after the call, Gregory Hughes, driving a Honda motorcycle, passed the petitioner on the highway, stopped and then offered him a ride to Florence. This offer was accepted since the petitioner had known Hughes in school. Before reaching town, Hughes

stopped his motorcycle in the parking lot of the Cale Yarborough Honda-Mazda Dealership. The petitioner testified that he did not know the reason for stopping nor did he inquire of Hughes. The petitioner stepped off of the motorcycle and walked away from Hughes, who had walked over to talk with someone else, and the petitioner then began casually inspecting the new cars on the lot. Within a few minutes, Officers Propps and Bower appeared at the scene and placed Hughes and the petitioner under arest.[2]

After his arrest, the petitioner testified that he engaged in a conversation with Officer Propps at the scene, but prior to that conversation had never been apprised of his *Miranda* rights.

The substance of the conversation with Propps was testified to by the petitioner during direct examination and it involved primarily attempts by Propps to gain admissions that the petitioner had traveled to Brownsville, Texas, to make a purchase of eleven pounds of marijuana with an individual named Andy Langston, also a resident of Florence, South Carolina. Petitioner answered questions concerning his acquaintanceship with Langston and stated that he even rode with the officers to the last known residence of Langston in an attempt to locate him that evening. The petitioner also testified that Officer Propps threatened to "smear" his name in the newspapers concerning the arrest unless he would lead them to Andy Langston.

Finally, the petitioner testified on direct examination that after he arrived at the Florence County Jail he had requested the presence of Officer Steve Zickafoose. According to the petitioner after Officer Zickafoose came to the detention center, they engaged in a conversation. The substance

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[2]The individual to whom Hughes was talking and later identified as Phil Culbertson was not arrested. In the testimony adduced at trial from Culbertson, he indicated that his purpose for being at the parking lot was to set up a "buy" from Hughes in the presence of narcotics officers in order to insure his immunity from prosecution for an earlier arrest for an unrelated criminal charge. (Appendix C)

of the conversation, elicited during the petitioner's direct examination, involved claims of confusion on the part of the petitioner for not having been advised of the reasons for his arrest and of the attempts by the other officers to obtain incriminating statements that the petitioner had been to Brownsville, Texas with Andy Langston to make the marijuana purchase. (Appendix D)

During cross examination, the prosecution questioned the petitioner concerning the confessions made to Propps, but at no time posed questions regarding any confessions or statements made to Zickafoose.

At the conclusion of the petitioner's case, the prosecution offered in reply the testimony of Officer Zickafoose in an attempt to impeach the petitioner's credibility with claims that certain confessions had been made by him to this officer. According to this witness's testimony, the petitioner admitted to making a trip to Brownsville, Texas, to purchase eleven pounds of marijuana. After this testimony, petitioner's attorney objected to its admissibility on the grounds that it was obtained in violation of *Miranda v. Arizona, supra,* and moved to strike this testimony. The petitioner's attorney also objected to its admissibility on the ground that it was improper reply testimony and later moved for a hearing out of the presence of the jury to determine its admissibility. The trial judge overruled the attorney's objection and refused to hold an in-camera hearing. (Appendix E)

At the conclusion of the State's case in reply, the matter was submitted to the jury and the petitioner was convicted on both counts in the indictment. Afterwards, the trial judge sentenced the petitioner to eight years on count two of the indictment and one year on count one of the indictment, which each sentence to run consecutively. (Appendix F and G)

After conviction, the petitioner timely filed his appeal to the Supreme Court of South Carolina. In his appeal, petitioner raised, *inter alia,* three exceptions to the court's treatment of the testimony of Officer Zickafoose. (Appendix H) In his brief, the petitioner argued that these exceptions

amounted to a deprivation of his rights guaranteed under the Fifth and Sixth Amendments of the United States Constitution. (Appendix I)

The South Carolina Supreme Court affirmed the petitioner's conviction in its opinion dated November 9, 1982. Essentially, the court relied upon its rule of practice twenty-three in affirming the conviction claiming that "no error of law had been committed, and that a full written opinion would be without precedential value." (Appendix A)

On November 18, 1982, the petitioner filed his petition for rehearing which was denied by the court on December 7, 1982. (Appendix A)

ARGUMENT

The petitioner submits that a writ of certiorari should be granted under the provision of Rule 17.1(c), Rules of the Supreme Court of the United States.[3] It is contended that certain incriminating statements alleged to have been made by the petitioner to Officer Zickafoose were improperly admitted into evidence in the State's case in reply operating in derogation of the petitioner's Fifth Amendment rights under the United States Constitution.

In the present case, the trial judge allowed the State to

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[3]A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

•••

C. When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

introduce testimony of Officer Zickafoose which established that the petitioner had made incriminating statements concerning his purchase of marijuana in Brownsville, Texas. The trial judge erred in two particulars in allowing the testimony to be admitted into evidence. First, the trial judge failed to hold an in-camera hearing to determine the voluntariness of the confession; and, secondly, the trial judge failed to strike the testimony because the prosecution failed to lay the proper foundation for the admissability of the impeachment testimony.

A

At the trial, the petitioner's attorney objected to the admissibility of the Zickafoose testimony on the grounds that no *Miranda* warnings had been given to the petitioner and thereupon requested a hearing out of the presence of the jury to determine the voluntariness of the confession. The trial judge denied this motion and allowed the confession into evidence for impeachment purposes.

It is the position of the petitioner that the trial judge committed a patent error of law in refusing the motion for an in-camera hearing. Where it is alleged, as in the present case, that no *Miranda* warning had been given to an accused, the trial judge must, as part of his responsibility of preserving the constitutional rights of the accused, hold an evidentuary hearing out of the presence of the jury to determine if the alleged confession was voluntary or obtained in violation of the accused's Fifth Amendment right of freedom from self-incrimination. *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966); *Jackson v. Denno,* 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed. 2d 908 (1964); *Lego v. Twomey,* 404 U.S. 477, 92 S.Ct. 619, 30 L.Ed. 2d 618 (1972). Since a review of the record clearly reveals that the trial judge failed to hold such a hearing, the petitioner was deprived of the rights afforded him under the Fifth Amendment of the United States Constitution. Accordingly, the affirmance of the petitioner's conviction by the South Carolina Supreme Court runs contrary

to the decisions of the United States Supreme Court thus establishing sufficient grounds for a granting of the petition for writ of certiorari.

B

At trial, the judge allowed the prosecutor to admit into evidence in the State's case in reply the alleged confession of the petitioner to Officer Zickafoose in an attempt to impeach the petitioner's credibility. Over objection of counsel, this testimony was admitted into evidence. It is submitted that where a confession was obtained in violation of the accused rights as is set forth in *Miranda v. Arizona, supra,* the confession may not be introduced, even for impeachment purposes, unless the confession is first shown to be trustworthy and that it is the product of proper cross-examination. *Harris v. New York,* 401 U.S. 225, 91 S.Ct. 643, 645, 28 L.Ed. 2d 1 (1971); *United States v. Havens,* 446 U.S. 620, 100 S.Ct. 1912, 64 L.Ed 2d 559 (1980).

In *Harris v. New York, supra,* the defendant was convicted of selling narcotics. At the trial, the defendant testified. On cross-examination he was asked whether he had made certain incriminating statements to the police immediately following his arrest, statements which partly contradicted his direct testimony. Prosecution then was allowed to impeach the defendant with the statement, as it was conceded that it was inadmissable under *Miranda v. Arizona,* and could not have been properly used in the prosecution's case in chief. 91 S.Ct. at pp. 644-645.

In affirming the defendant's conviction, the Court rejected the defendant's argument that *Miranda* mandated the exclusion of all impermissably obtained confessions for all purposes at trial. In support of its holding, the Court stated:

> Having voluntarily taken the stand, the petitioner was under an obligation to speak truthfully and accurately, and the prosecution

here did no more than utilize the traditional truth testing devices of the adversary process.

A reading of *Harris v. New York, supra,* does not, however, support the prosecutions unbridled use of illegally obtained confessions at trial. The court took pains to note that the confession, inadmissable against an accused in the prosecution's case in chief, could only be used for impeachment purposes and only after *"the trustworthiness of the evidence satisfies legal standards."* (Emphasis added) 91 S.Ct. at p. 645.

In *United States v. Havens, supra,* this Court was again confronted with determining the boundaries of using illegally obtained confessions for impeachment purposes. In that case, the defendant was charged with conspiracy to import and intentionally possessing cocaine. The defendant and his companion, McElroth, were both arrested by customs agents in Miami, Florida, after they had returned from Lima, Peru. The defendant's luggage was seized and searched without a warrant. No drugs were found but agents seized a T-shirt from which pieces had been cut that matched the pieces which had been sewn to McElroth's shirt. Before trial, the T-shirt and other evidence seized were supressed. 100 S.Ct. at p. 1914.

During the trial, the defendant testified on his own behalf and denied involvement with the drug smuggling. On direct examination and again on cross-examination, the defendant denied having the T-shirt in his suitcase or in any way being involved in the sewing of the cotton swatches to make pockets in the T-shirt. 100 S.Ct. at p. 1914. The defendant also denied on cross-examination having told a government agent that the T-shirts found in his luggage belonged to McElroth.

In the government's case in reply, the government agent, over objection by the defendant's attorney, was allowed to testify that the T-shirt had been found in the defendant's suitcase and that he had told the agent that the T-shirt belonged to McElroth. The T-shirt was then admitted into evidence for impeachment purposes. 100 S.Ct. at p. 1914.

On appeal, the Court rejected the defendant's argument that illegally obtained evidence may be used to impeach

only the direct testimony of the defendant and not that testimony first elicited during cross-examination. In rejecting this contention, the Court held:

> [A] defendant's statement made in response to *proper* cross-examination reasonably suggested by the defendant's direct examination are subject to otherwise *proper* impeachment by the government, albeit by evidence that has been illegally obtained and that is inadmissable on the government's direct case, or otherwise, as substantive evidence of guilt. (Emphasis added) 100 S.Ct. at p. 1917.

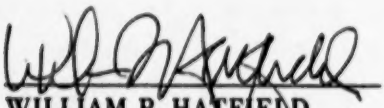
In the present case, petitioner submits that the introduction of the Zickafoose testimony was not the product of proper cross-examination or proper impeachment, thus it should have been excluded from trial.

At trial, during cross-examination of the petitioner, the prosecution never asked any questions concerning any confessions made to Officer Zickafoose by the petitioner. However, in the State's case in reply, the prosecution offered the testimony of Zickafoose regarding the confessions for impeachment purposes. Thus, the proper foundation was not laid. In South Carolina, before extrinsic evidence of a prior statement can be admitted, the witness who was alleged to have made such a statement must be advised on cross-examination "of the substance of the prior statement and the time when, the place where and the person to whom it was made." *State v. Roper*, 274 S.C. 14, p. 19, 260 S.E. 2d 705 (1979). Furthermore, if the witness on cross-examination admits that he has made such a statement, no testimony may be offered simply confirming such admission. *State v. Roper, supra*, at p. 19. Since the petitioner in the present case was never afforded the opportunity to either admit or deny having made the statement on cross-examination, the foundation impeachment was not properly laid.

CONCLUSION

The ruling of the trial judge admitting the confession into evidence was clearly erroneous and contrary to the announced decisions of this Court. Accordingly, it is respectfully submitted that a writ of certiorari be granted so that the petitioner's conviction may be reviewed in light of the applicable principles of law set forth above.

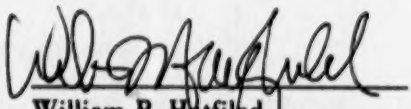
Respectfully Submitted,



WILLIAM P. HATFIELD
Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned counsel for petitioner, hereby certifies that on the 3rd day of February, 1983, three copies of petitioner's petition for writ of certiorari were served upon counsel for respondent by mailing the same to the office of the Attorney General for the State of South Carolina at Post Office Box 11549, Columbia, South Carolina 29211.



William P. Hatfield
COUNSEL FOR PETITIONER

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OPINION OF SOUTH CAROLINA SUPREME COURT

Appeal From Florence County
Marion H. Kinon, Judge

Memorandum Opinion No. 82-MO-323
Filed November 9, 1982

AFFIRMED

T. Kenneth Summerford, of Florence; and S.C. Commission of Appellate Defense, of Columbia, for appellant.

Attorney General Daniel R. McLeod and Assistant Attorneys General Lindy P. Funkhouser and Preston F. McDaniel, all of Columbia; and Solicitor Dudley Saleeby, Jr., of Florence, for respondent.

PER CURIAM; Appelant was convicted of conspiracy to possess marijuana with intent to distribute and possession of marijuana with intent to distribute. He was sentenced to one years' imprisonment for the first offense and to a consecutive eight-year imprisonment on the second offense.

After careful consideration of the record and briefs, we are of the opinion that no error of law is present, and that a full written opinion would be without precedential value. Accordingly, the judgment of the lower court is affirmed under

Rule 23 of the Rules of Practice of this Court.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ George T. Gregory, Jr. A.J.

s/ David W. Harwell A.J.

(caption deleted)

PETITION FOR REHEARING

Appeal From Florence County
Marion H. Kinon, Judge

81-GS-21-708

Appellant respectfully petitions the Court for a rehearing of this case pursuant to Rule 17, Section 2, of the Rules of Practice in the Supreme Court of South Carolina on the following points:

1. That when the State entered into its plea bargain with the Defendant Gregory Hughes, the State in effect nolle proseque the case as to the Defendant Hughes leaving only the Appellant as the sole alleged conspirator in Count One of the indictment. A con-

spiracy requires proof of a combination of two (2) or more persons.

2. The Trial Court did not follow Section 24-19-50 (d) of the South Carolina Code of Laws in making its determination of whether Appellant would benefit from a youthful offender sentence. The Trial Court basically ruled that a drug offender per se was not eligible for the youthful offender program. (Tr. p. 284, line 7 through Tr. p. 285, line 1; Tr. p. 291, line 10 through line 24.)

s/ T. Kenneth Summerford,
T. KENNETH SUMMERFORD,
Attorney for Appellant

ORDER OF SOUTH CAROLINA SUPREME COURT DENYING PETITIONER

Petition denied.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ George T. Gregory A.J.

s/ A.J.
Harwell (not participating)

December 7, 1982

SALEEBY AND MR. SUMMERFORD, WITH NO OBJECTIONS BEING MADE.

SOLICITOR SALEEBY: May we proceed Your Honor?

COURT: Yes, sir.

SOLICITOR SALEEBY: I'd call Randy Propps.

RANDY PROPPS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY SOLICITOR SALEEBY:

Q. Mr. Propps tell the ladies and gentlemen of the jury who you work with.

A. I work with the Florence County Sheriff's Department. I'm a Narcotics Investigator.

Q. All right, now, you narcotic deputy sheriff's, or for deputy sheriff's to have beards — I'd like for you to explain briefly as to the beard.

A. In my line of work, we get out and mingle with the people that are distributing drugs in the County of Florence and in the surrounding counties. Most of the time, the people that are involved in drugs aren't your real shorthaired, clean cut, everyday type individuals. And we get in with the crowd, we've got to have a beard and most of the time we have to have long hair and afro.

Q. This is part of your work posture?

A. That's correct.

Q. Tell the ladies and gentlemen of the jury how long you've been with the Florence County Sheriff's Department, and how much of that time you've spent in Narcotics?

A. I've been with the Florence County Sheriff's Department for approximately eight years. Seven of those years I've worked in Narcotics.

Q. Have you had any particular training other than on-the-job training in the area of Narcotics Investigations?

A. Yes, sir, I have. I have attended the South Carolina Criminal Justice Academy in Columbia, a basics school which was eight weeks long, of which a week of that was narcotics

and dangerous drugs. I have also attended a DEA School, which is the Federal Drug Enforcement Administration School. This was two weeks. And in this we were taught surveillance, how to deal with people who distribute drugs, and other things relative to drug cases. I have also attended the University of Georgia, at Athens, Georgia. This was also a one-week school in Narcotics and Dangerous Drugs and how to work undercover and things of that nature.

Q. Now let me call your attention particularly to a day a little less than two months ago, August 12th, 1981. Did you happen to receive some information on that day?

A. Yes, sir, I did.

Q. And what time did you receive that information?

A. It was approximately 8:30 in the evening.

Q. And where were you when you received the information.

A. Officer Pat Bower and myself, who is with Timmonsville Police Department were out working on some drug-related cases.

Q. All right, and the information came to you in person or over the phone?

A. It came to us over the telephone.

Q. And you spoke about Mr. Bower who is not here but is on his way. Would you tell the members of the jury who Mr. Bower is and how he happened to be with you on this evening.

A. Pat Bower was an officer with the Timmonsville Police Department. And we would use Mr. Bower in making marijuana purchases and also in surveillance and things of this nature. He has worked with us in relative to drug cases.

Q. As a result of a call you got information you received, where did the two of you go and what did you look for?

A. We received information, as I say, approximately 8:30 P.M., that a drug deal was to go —

Q. Now don't tell us what the information was. You can't give us hearsay. But tell us, as a result of the information, where you went and what you looked for.

A. We went to the Cale Yarborough Honda Mazda parking lot, which is located on Highway 76, out of Florence.

Q. And what were you looking for there?
A. We were looking for a white motorcycle with two white males.
Q. And did you know by names who you would be looking for?
A. Yes, sir.
Q. And who was that?
A. Gregory Hughes and Levern Humphries.
Q. Now, did you have prior knowledge of these two individuals being here in the Florence Community?
A. Yes, I did.
Q. Did Mr. Bower have any prior knowledge of these two individuals?
A. Yes, he did.
Q. And would you tell us, would you point out for the record and the jury who the two defendants are and how they're dressed here in court?
A. Mr. Gregory Aster Hughes, or Aster Gregory Hughes, is seated behind Mr. Summerford in the blue shirt and white pants with the curly hair. Mr. Cecil Levern Humphries is sitting beside Mr. Summerford in a brownish, green, suit with curly hair and a white mustache.
Q. All right. After you got it — would you tell the members of the jury, who might not be acquainted, where Cale Yarborough Honda-Mazda is?
A. It is out on Highway 76, West of Florence, like you're going toward Timmonsville.
Q. Is it within the city limits?
A. No, sir, it is not.
Q. Is it within the county?
A. Yes, it is.
Q. After the two of you got to that location, what did you do?
A. When we arrived at the location and there was no white motorcycle or two white males there, Officer Bower was put into the wooded area, which is right beside of the Cale Yarborough Honda-Mazda parking lot, and I proceeded around to the back in my automobile.

Q. All right, tell us what happened next.

A. I was seated behind, in my automobile, behind the Cale Yarborough Honda-Mazda, when I received a call on a walkie-talkie from Mr. Bower that a white motorcycle had just pulled into the lot.

Q. All right, tell us what happened after that.

A. Okay, at that point, Mr. Bower had called me and I came around from behind the Cale Yarborough Honda-Mazda parking lot in the back to the front of the lot where the cars are at.

Q. All right. And tell us what you observed and what you did.

A. When I got around the corner, I saw Cecil Levern Humphries standing to my left, looking at an automobile. I saw Gregory Hughes with Mr. Bower, standing about thirty-thirty-five feet away, close to his motorcycle and it was parked in the lot.

Q. All right. Just tell us what actions you took and Mr. Bower took in your presence with these two defendants from that point forward.

A. The action that I took, I knew Levern Humphries by sight. I told Levern not to move, that he was under arrest. I then walked over to Mr. Humphries and handcuffed Mr. Humphries and took him back to my automobile. At the same time, Mr. Bower was handcuffing Gregg Hughes.

Q. All right, tell us what you did then. After we had received the call, another deputy sheriff, Barry Prosser, had arrived on the scene. We then took Mr. Humphries and put him in Mr. Prosser's car. He was handcuffed. And we walked over to Gregg Hughes and talked with Gregg a few minutes.

Q. All right. You can't tell us what he said. Can you tell us what search, if any, you conducted there in the area.

A. We then conducted a search of the white motorcycle and we then looked into the back of a white truck which was on the lot for sale. And in that truck was a bag containing two bags of green plant material.

Q. Now what kind of bags was it that was in the back of the truck?

A. It was in a brown paper bag and there were two zip-lock-type bags containing green plant material.

Q. I'm gone show you these two items and ask you if you can identify them?

A. Yes, sir, I can.

MR. SUMMERFORD: No objection.

Q. Your Honor, I'd introduce into evidence without objection State's Exhibit Number one.

MR. SUMMERFORD: Now that's for identification, is that correct?

Q. I thought you said no objection to entering into evidence.

MR. SUMMERFORD: I thought you were introducing it for identification. No, sir, I don't think we can —

Q. All right, for identification is fine.

(MARIJUANA ENTERED AS STATE'S EXHIBIT 1, FOR I.D.)

Q. Mr. Propps, I show you what has been marked for identification as State's Exhibit Number 1, and I ask you if you can tell me what that is.

A. It is a bag of green plant material.

Q. I show you State's Exhibit Number 2, which has been marked for identification and I ask you if you can tell the members of the jury what that is?

A. It is also a bag of green plant material.

(MARIJUANA ENTERED AS STATE'S EXHIBIT 2, for I.D.)

Q. And can you tell us from what location these bags were seized, by whom, and when?

A. Okay. They were in the back of a white pick-up truck which was on the lot for sale, approximately ten feet away from Mr. Gregory Hughes' motorcycle.

Q. And when you say they were in the back, were they in the passenger compartment or in the —

A. In the bed, in the bed of the truck.

Q. In the bed of the truck. Did you place these individuals under arrest or did Mr. Bower place them under arrest in your presence?

A. I placed Levern Humphries under arrest and he placed Gregg Hughes under arrest; Pat Bower did.

Q. All right. You said that after the two had been placed under arrest, another deputy arrived on the scene?

A. Yes, sir.

Q. And what did that deputy do with whom?

A. We then put, as I say, Mr. Humphries in the car with the deputy and we were talking with Gregg Hughes.

Q. All right. After you finished talking with Mr. Hughes, what did you do with him?

A. Mr. Hughes was then transported to the Florence Detention Center by Deputy Barry Prosser.

Q. What did you then do?

A. I then went over to my automobile and we had taken Mr. Humphries from Mr. Prosser's car and put him in my automobile. I then advised him of his Miranda Rights.

Q. All right, and will you please advise the court and ladies and gentlemen of the jury what rights you advised the defendant of.

A. I advised Mr. Humphries off of my Miranda Card, which I carry in my badge case. I advised Mr. Humphries that he had a right to remain silent. I advised him that anything he said may be used in court as evidence against him; that he was entitled to talk to a lawyer then and have him present then or at any time during questioning; that if he could not afford a lawyer the court would appoint one without cost to him; and that if he decided to make a statement and wanted to discontinue making that statement at any point he could do so and I wouldn't ask him anything further. I asked him if he understood his rights and he stated that he did.

Q. After you advised him of his rights, did he have a conversation with you?

MR. SUMMERFORD: If Your Honor please, we want

to take up a matter out of the presence of the jury in regards to that.

COURT: Ladies and Gentlemen, please go to the jury room. Do not discuss the testimony you've heard so far.

(WHEREUPON THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

COURT: You may proceed.

MR. SUMMERFORD: If Your Honor pleases, we would like to question the witness as to his giving the Miranda Warnings to this Defendant and also we would like to put up some testimony.

COURT: All right, sir, at this point the solicitor hasn't laid the proper foundation. I'll let him continue and then you can cross-examine him and then I'll hear you.

MR. SUMMERFORD: It may have be premature —

COURT: No, sir. No, sir. Your question was not premature.

Q. Your Honor, for the purposes of the in-camera hearing of record, would you like for me to repeat on the record what rights he advised the Defendant of?

COURT: Yes, sir.

Q. All right. Mr. Propps, for the purposes of this hearing, I take you back to the point where you said you brought the Defendant, Cecil Levern Humphries, and placed him in your automobile. Did you at that point advise him of his rights?

A. Yes, sir, I did.

Q. And did you use anything to help you advise him of his rights?

A. Yes, sir, I did.

Q. What device did you use to help you advise the Defendant of his rights?

A. A Miranda Warning Card.

Q. And using that card, what rights did you specifically advise Mr. Humphries of?

A. I advised Mr. Humphries, you have a right to remain silent; anything you say may be used in court as evidence against you. You are entitled to talk to a lawyer now and have

him present now or at any time during questioning. If you cannot afford a lawyer, the court will appoint one for you without cost to you. If you decide to make a statement and you want to discontinue making that statement at any point, you may do so and I will ask you no further questions. Do you understand the statements I have made to you? Are there any questions in regard to what I have stated to you?

Q. All right. What was his response when you asked him if he understood what you'd read to him?

A. He stated he understood.

Q. Did he have any questions for you?

A. No, sir, he did not.

Q. Did he proceed to talk with you after that?

A. He proceeded at that time to talk to me and Officer Bower.

Q. Were the acts that you're talking — you have previously testified to just now — as to advising him of his rights, done in the immediate physical presence of Mr. Bower?

A. Yes, sir, it was.

Q. Did he appear in any way to have difficulty understanding or comprehending what you were telling him?

A. No, sir.

Q. Did he appear to be under the influence of any drugs or intoxicants?

A. No, sir.

Q. Was he threatened or coerced by you or anyone in your presence when he was talking with you?

A. No, sir.

Q. Was he promised leniency or any hope of reward by you or anybody in your presence?

A. No, sir.

Q. Did you have more than this one conversation about this offense with him? Or is this the only conversation you had with this defendant about this?

A. We had it with him at this time and we also had it with him in another automobile a little later that night.

Q. All right. Tell us, if you would, please, what he told you

after you had given him his rights there at Cale Yarborough Honda-Mazda.

A. I told Levern that he was in trouble and that he was being charged with possession of marijuana with intent to distribute and that he was also being charged with conspiracy to distribute marijuana. I informed him of the penalties for both crimes as I knew them to be at the time. Mr. Humphries stated that he would like to give us some information. He stated that he really wouldn't want his girlfriend's father to know about him being arrested that night. He stated that Gregory Hughes had set up the deal that night and that Greg was going to get some of the money for setting up the marijuana deal. He also stated that he and Andy Langston had been to Brownsville, Texas. He stated they had brought back 11 pounds of marijuana from Brownsville, Texas. And that out of this 11 pounds, they had cut it up and they had six pounds total weight because there was a lot of stems involved in it. He stated that he would show me where Andy Langston lived and he took me to the location where Andy Langston had lived previous to whenever he had first known about him. He stated, we asked him if he had any more marijuana at his trailer and he stated that he did but that he did not want us to go back there because there was girl there and he didn't want to alarm her. He stated that it was only about an ounce of marijuana back at his trailer. He said that Andy Langston had two more pounds of marijuana. And this was the conversation we had.

Q. Did he produce anything at that time?

A. No, sir, he did not. As I stated, he took us to where Andy Langston had lived but Andy had already moved from there.

Q. And you made reference to an additional conversation you had later in the evening. What were the circumstances of that?

A. He wanted to get in touch with Officer Zickafoose of the Florence County Sheriff's Department. And Officer Zickafoose met us at the City-County Complex. We got into the automobile and he talked a little bit with Officer

Zickafoose privately while I gased up my automobile. We got into Officer Zickafoose's car and we went out to Keel's Trailer Park, or Terry's Trailer Park as it's known now. And he showed me the trailer that Andy Langston had stayed in. And this same conversation, basically the same conversation came up again, that he didn't want Mr. Keels to know that he had been caught. And the only reason that he stated he was selling the marijuana for was to get some money so he could go down to the beach and see his girlfriend, Kim.

Q. Did he ever produce any substances and give them to you?

A. He also — yes, sir, he did. In my automobile when we were talking to him, he said, I have something here that I want you to have and throw them away. And I stated, what is it, Levern? He said, reach in my pocket. So we reached in his pocket and came out with a clear plastic bag which contained white tablets and also a blue and red capsule. I told Levern at that time, I said, Levern, since you've been honest with me, I'm not gonna charge you with these pills. And he stated that he had got them from somebody earlier that evening.

MR. SUMMERFORD: Of course, I realize that it's an in camera hearing, but if Your Honor please, we take the position that that's not admissable testimony.

COURT: Solicitor?

SOLICITOR SALEEBY: Your Honor, I think after, I think the time to argue that would be after counsel has examined him.

COURT: All right, sir.

Q. Let me ask you this one other, you did not chemically test those pills, did you?

A. No, sir, they were not chemically tested. They were examined and we looked them up in the physician's desk reference, which is a book which contains numerous pills that are prescribed by doctors, and in this book they appeared to be quaaludes, which is a schedule two controlled substance and also tuinal, which is a schedule two controlled substance.

Q. All right, I was going to ask that question.

MR. SUMMERFORD: We feel that that's unecessary, if Your Honor pleases and we'd ask that that be stricken from the record.

COURT: Solicitor, do not go into that part of the statement in front of the jury.

Q. That's why I brought it out now, Your Honor, so that you would have a chance to rule on it. I don't have any more questions.

COURT: Mr. Summerford?

CROSS EXAMINATION BY MR. SUMMERFORD:

Q. Randy, what time was this?

A. This was shortly after nine o'clock.

Q. Was it light or dark?

A. It was, after we had gotten, yes, sir.

Q. And you say shortly after nine o'clock? Nine fifteen?

A. You talking about the time that I questioned Mr. Humphries or the time that the deal went down?

Q. Yes, the time that you questioned Mr. Humphries.

A. It was approximately 9:15 or 9:20.

Q. All right, sir. Now is it my understanding that you came around the building?

A. Yes, sir.

Q. And you saw Cecil Humphries standing by an automobile?

A. Yes, sir, I did.

Q. And at that point did you place him under arrest?

A. Yes, sir.

Q. And put the handcuffs on him?

A. Yes, sir.

Q. And did you tell him what you were charging him with then?

A. Yes, sir, I told him he was under arrest for possession of marijuana with intent to distribute.

Q. With intent to distribute?

A. That's correct.

Q. All right, did you tell him anything else at that point?

A. No, sir. At that point he was put in Mr. Prosser's car.

Q. All right, sir. Now, you say he was put in Mr. who's car?
A. Mr. Barry Prosser, the deputy sheriff that had arrived on the scene.
Q. Had he arrived at that point now, Randy?
A. Yes, sir. He pulled up shortly after the — he was coming in about the same time I was because as soon as he heard the call come in on the radio he started from the Habitat 2,000 Apartments, which was just a short piece down the road.
Q. Are you sure he was there in the deputy car at that point?
A. Yes, sir, he arrived, as I say, you know, right after I put the handcuffs on him.
Q. Where was his car parked?
A. At the Habitat 2,000 Apartments, which is located on Highway 76, less than, probably less than a quarter of a mile from there.
Q. All right, but I mean after he came into the lot. Where was he parked?
A. He pulled in almost directly beside my car.
Q. Your car was there?
A. Yes, sir.
Q. All right, but you're sure you didn't put him in your car?
A. I don't believe I put him in my car until after —
Q. Now I don't want no believe.

SOLICITOR SALEEBY: Your Honor, I believe he's stopping him now. I know the jury's not here but Mr. Prosser hadn't finished.

COURT: All right, sir, let him continue. Go ahead and answer.

A. Okay. I believe that he was put in Mr. Prosser's car first and then after Mr. Hughes was taken to jail, he was put in my automobile.
Q. All right, sir. And did you ever take him out of that automobile before you left the scene?
A. Out of my automobile?
Q. Whatever automobile you put him in.

A. Yes, sir.
Q. What did you do with him then?
A. I took him to my automobile.
Q. You took him to your automobile?
A. That's correct.
Q. All right, sir. Now, it's my understanding then you took — after you put him into an automobile, you went over and started talking with Pat Bowers and greg Hughes, right?
A. That's correct.
Q. And then you shipped him on off to the Sheriff's Department?
A. To the Detention Center.
Q. I mean to the Detention Center.
A. Yes, Sir.
Q. And who went with him?
A. Deputy Prosser took Mr. Hughes.
Q. Just the two of them?
A. That's correct.
Q. Now did Pat Bowers have an automobile there?
A. No, sir, he did not.
Q. He came there with your automobile?
A. He was riding with me, yes, sir.
Q. So the two of you walked back to your automobile and you say that Levern was placed in your automobile?
A. That's correct.
Q. And what was the first thing that you said to him when you went back to the car?
A. I told him that he was in some trouble.
Q. All right. Now do you recall Pat Bowers going up to your automobile and pointing his finger at him and said, Boy, you in bad trouble.
A. No, sir, I do not.
Q. Do you remember that?
A. No, sir, I do not.
Q. You don't remember that?
A. No, sir, I do not.
Q. You weren't there then, were you?

A. Yes, sir, I was at the scene the entire time.
Q. All right, well, you saw everything that Pat Bowers did?
A. After I had come around from behind the building, yes, sir.
Q. No, at that point, did Levern tell him, don't point your finger in my face?
A. No, sir, he did not.
Q. You didn't hear that either?
A. No, sir.
Q. All right, then what was the next thing that was done?
A. He was advised of his Miranda Warnings.
Q. All right. Now did you get inside the automobile to do that?
A. Yes, sir.
Q. You got inside?
A. That's correct.
Q. All right. Now, did you cut a light on on the inside of the automobile?
A. Yes, sir, I did.
Q. You read it?
A. Yes, sir.
Q. Did you have to read it?
A. No, sir, Mr. Summerford. But when you were solicitor I was informed by you it was always better to read off of the car.
Q. Now, you didn't have to bring up anything like that. You read it from that card. That's what you say?
A. Yes, sir.
Q. Huh?
A. Yes, sir.
Q. Where was Mr. Bowers when you read it?
A. He was seated in the back of my automobile.
Q. Seated in the back of your automobile?
A. That's correct. Levern was in the passenger, in the front seat.
Q. And he heard you say that? He heard you reading the card?

A. Yes, sir.

Q. Now you read him the card after you told him what he was charged with?

A. I informed him what he was charged with. I read him his rights and then I, again, informed him what he was charged with and what the penalties could be.

Q. And why did you tell him again?

A. Well, sir, I, again, wanted to make sure that he understood what he was charged with.

Q. So you told him — that's three times, is that right?

A. Yes, sir.

Q. That's three times you informed him about what he was charged with?

A. That's correct.

Q. And, of course, you're willing to take the polygraph that you read —

SOLICITOR SALEEBY: Your Honor, that's got nothing to do with this hearing. Mr. Summerford knows that.

Q. There's not a jury here, if Your Honor please.

COURT: Yes, sir, please understand this is not a jury.I've had a little bit of experience. I know polygraph is not admissable and you know it. Let's stick to the issues.

Q. All right. Now, you say you read him the miranda warnings and you again advised him of his, of the charges against him?

A. I did, sir.

Q. All right, what happened then?

A. Levern stated that he did not want Mr. Keels to know that he had been arrested. This is Kim Keels' father, whom he was dating at that time.

Q. And he said what then?

A. He wanted to know what he could do for us not to take him to jail that night and about Miss Keels, because he didn't want Mr. Keels to find out about it that evening because he didn't want to quit seeing Mr. Keel's daughter.

Q. Did you have a tape recorder with you?

A. No, sir I did not.

Q. Do you have a tape recorder?

A. Do we have tape recorders?
Q. Did you have a tape recorder with you.
A. No, sir.
Q. Did you go back to the Detention Center and have the tape recorder?
A. No, sir, I did not.
Q. I have no further to ask of that part of it.
COURT: Anything further?
SOLICITOR SALEEBY: No, Your Honor.
COURT: If you'll stand aside for just a few minutes.
CECIL LEVERN HUMPHRIES, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
DIRECT EXAMINATION BY MR. SUMMERFORD:
Q. Please state your full name for the record.
A. If you will, excuse my voice. I have laryngitis, but my full name is Cecil Levern Humphries and my date of birth is July 26, 1961.
Q. Levern on August the 12th, 1981, at approximately 9:00 p.m. on that date, were you arrested by Randy Propps?
A. Yes, sir.
Q. Where were you when you were arrested?
A. I was standing in Cale Yarborough Parking Lot, between two cars.
Q. Between two cars?
A. Yes, sir.
Q. And where did you first see Randy Propps coming from?
A. He entered on the left side of the building, coming up around to the front, from this corner.
Q. All right, what was said, if anything, then?
A. I asked him what was going on and he put on the handcuffs.
Q. Did he tell you at that time what you were charged with?
A. No, sir.
Q. At any time after that, has he ever pulled out a card and read to you what is commonly referred to as Miranda Warnings?
A. No, sir.

Q. Never did?
A. No, sir.
Q. Did he ever tell you anything about your rights to remain silent or anything of that nature?
A. No, sir.
Q. Thank you, sir. Answer any questions counsel has for you.
CROSS EXAMINATION BY SOLICITOR SALEEBY:
Q. Mr. Humphries, what time did you get there at the parking lot?
A. I don't know.
Q. What time did you get up with Mr. Hughes?
A. I'd say probably two minutes before that, when we arrived in the parking lot.
Q. Two minutes?
A. Two to three minutes, yes, sir.
Q. And how did you get there?
A. On a motorcycle.
Q. Who drove it?
A. Greg.
Q. And where were you riding, in front of him or behind him?
A. Behind.
Q. Anything between you?
A. No, sir.
MR. SUMMERFORD: Now, if Your Honor please, we don't think that's proper cross examination.
COURT: Yes, sir, let's stick with the voluntariness.
Q. Now, when you got there, how long were you there before you saw Mr. Propps?
A. I would say approximately three to four minutes.
Q. Did you see Mr. Propps or Mr. Bower first?
A. I saw Mr. Propps.
Q. When did you first see Mr. Bower?
A. When Mr. Propps drove up, I saw Mr. Propps and then I turned directly to my left and saw Greg and Mr. Bower.

Q. And you're telling us that Mr. Propps, when he handcuffed you, did not tell you what you were under arrest for?
A. Yes, sir.
Q. Did he ever tell you what you were under arrest for?
A. Much later that evening.
Q. Much later. And were you ever seated in his car?
A. Yes, sir.
Q. Where were you seated in his car?
A. In the front seat of his car.
Q. And where was he seated?
A. In the driver's seat.
Q. And was there anybody else there?
A. Yes, sir, Mr. Bower was there.
Q. And where was he seated?
A. In the, behind Mr. Propps in the car, in the back seat.
Q. And you were advised at that time of your Constitutional Rights?
A. No, sir.
Q. Are you saying not off a card or not at all?
A. Not off of a card and uh —
Q. Never, not at all?
A. No, sir.
Q. Never at all that evening?
A. Not when I was arrested.
Q. All right. Were you ever given your rights by Mr. Propps or anybody else at Cale Yarborough Honda-Mazda?
A. Not to my knowledge.
Q. Were you ever given your rights later that evening when you rode around with the officers?
A. Much was said, but not to my knowledge, no, I wasn't.
Q. Not to your knowledge. To your knowledge, you were never given, advised of your rights, is that correct?
A. Yes, sir.
Q. Did you make certain statements to them?
A. Yes, sir, I did.
Q. Did you pull some pills out of your pocket and give —
MR. SUMMERFORD: If Your Honor please, now we're

going into facts now.

Q. Your Honor, I'm trying to find out how free and voluntary.

COURT: All right, sir, for that purpose then.

Q. Did you pull some pills out of your pocket and give them to Mr. Propps?

A. No, sir, I was handcuffed.

Q. You were handcuffed. Did you tell him that they were in your pocket?

A. Yes, sir.

Q. And asked him to take them out?

A. Yes, sir.

Q. Did you tell him voluntarily that there was some more marijuana, just a little bit, at your house?

A. No, sir.

Q. You didn't? Did you tell him voluntarily that you had got some marijuana from Brownsville, Texas?

MR. SUMMERFORD: If Your Honor please, we still don't think that that's proper.

Q. I asked him if it's voluntary.

MR. SUMMERFORD: No, sir, not that time.

COURT: Solicitor, let's cut it off here. You're about to go too far.

Q. Did you make any voluntary statements to them?

A. Yes, sir.

Q. Were you ever promised anything?

A. Yes, sir.

Q. What were you promised?

A. Leniency.

Q. Leniency? What kind of leniency?

A. It wasn't gone into because there was no result of what I said.

Q. Were you ever threatened?

A. In what way?

Q. In any way.

A. Not that I can recall right now.

Q. Well, you say leniency. What kind of statement are you

talking about? Who made some sort of leniency statement to you?

A. Well, in leniency, I'm not sure. If my definition is exactly right, I think I know what I'm talking about. But it was said that the only way I can help you is if you help me.

Q. Anybody say that you would be allow to plead to a certain offense or that charges would be dismissed or anything else like that, perhaps if you gave a statement or cooperated?

A. No, sir.

Q. All right. Thank you.

MR. SUMMERFORD: Gregory, come around, please, sir. Gregory Hughes.

COURT: His lawyer's not here. He's represented by counsel. Now would there be any questions asked of this young man that would involve him?

MR. SUMMERFORD: No, we're not going into any factual situation, other than to ask him if he was apprised of his miranda warnings.

SOLICITOR SALEEBY: That has nothing to do —

COURT: No, sir, that's nothing to do with this case. You may be seated.

MR. SUMMERFORD: I understood, if Your Honor pleases, just for the record sake, I understood Mr. Propps to say that he had gone over with Mr. Bower, Mr. Pat Bower and that they had taken him, placed him under arrest, and sent him on to the station. Now if he apprised one defendant of his Constitutional Rights and not the other, I think that would be admissable at the same time and the same place.

COURT: No, sir, they could advise one and not advise the other. That way one would be admissable and one would not be admissable.

MR. SUMMERFORD: All right, sir.

COURT: Anything further?

MR. SUMMERFORD: Nothing further.

COURT: Does either side wish to present any argument?

SOLICITOR SALEEBY: Your Honor, I would ask the

court to advise us now about having us go into the fact that he volunteered, as far as the statement, the fact that he had some pills on him. He wasn't charged but it is part of what happened that night.

COURT: Yes, sir, but that could be prejudicial to him, Solicitor. That's not an issue before me.

SOLICITOR SALEEBY: Then I won't ask Mr. Propps to go into it.

COURT: All right, sir, anything further, Gentlemen?

MR. SUMMERFORD: Nothing further.

COURT: Let the record show that I have conducted an incamera hearing. I am convinced beyond a reasonable doubt and so find that the confession or statement obtained from the Defendant was freely and voluntarily given. The same was given without duress, without coersion, without undue influence. I further find the Defendant was advised of his Constitutional Rights as was set forth by the officer. I further find the Defendant knowingly and intelligently waived such rights of the 5th and 6th Amendments to remain silent and have counsel present with him at the interview and interrogation. I find that the decision to confess or make the statement was the product of the Defendant's own unfettered will. Do you need a few minutes before I bring the jury back or are you ready to proceed?

MR. SUMMERFORD: We'll take a few minutes, Your Honor.

COURT: All right, we'll be in recess for about five minutes.

(WHEREUPON THE COURT RECESSED FOR FIVE MINUTES.)

COURT: Ready for the jury?

SOLICITOR SALEEBY: Yes, Your Honor.

COURT: Give us a jury.

(WHEREUPON THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE JURY, OFFICER PROPPS RETURNING TO THE STAND AND CONTINUING DIRECT EXAMINATION IN THE PRESENCE OF THE JURY.)

COURT: You may proceed.

Q. Mr. Propps, we were at the point where you told us that you had sent the Defendant Hughes to the Florence Detention Center. What step did you take next with regards to Defendant Humphries?

A. Mr. Humphries was then placed in my automobile and Mr. Prosser took Mr. Hughes to the Detention Center. Mr. Humphries was placed in the front passenger side of my automobile. Mr. Bower got in the back seat and I got in the driver's side.

Q. All right, after you got in the side, I believe you testified that you did read him his rights?

A. Yes, sir, I did.

Q. And you told us, I believe, in the presence of the jury, what rights you advised him of?

A. Yes, sir, I did.

Q. After you had advised him of his rights, did he indicate he was willing to talk with you?

A. Yes, sir, he did.

Q. Was he threatened by you or anybody in your presence?

A. No, sir, he was not.

Q. Was he promised anything or given any hope of reward by you or anybody in your presence?

A. No, sir, not really.

Q. Please tell the ladies and gentlemen of the jury what your conversation was from that point forward with the Defendant, Cecil Levern Humphries.

A. I told, after I informed Levern of his Constitutional Rights, I told him that he was in trouble and that what he was charged with, that he was charged with possession of marijuana with intent to distribute and conspiracy to distribute marijuana. I also told him at that time what the penalty was for this.

Q. All right. After telling him that, did he have any conversation with you?

A. Yes, sir, he did.

Q. Please tell the ladies and gentlemen of the jury what he told you.

A. Mr. Humphries stated that he knew that he was in trouble and that he would do about anything to keep from going to jail that night. He didn't want Mr. Keels, who is his girlfriend's father, to find out about it because he didn't want to quit seeing the young lady, Miss Kim Keels.

Q. What else did he tell you?

A. He stated that Gregory Hughes had set up the deal for that evening and that Greg was gonna get some money for helping him sell the marijuana. Mr. Humphries stated that he and another subject, Andy Langston, had went to Brownsville, Texas —

MR. SUMMERFORD: Your Honor, we object to this now, if Your Honor please.

Q. Your Honor, I think it's totally relevant.

MR. SUMMERFORD: No, sir.

Q. Your Honor's ruled.

MR. SUMMERFORD: Not on this point.

Q. Yes, sir.

COURT: Well, I'm prepared to rule. I'll be glad to hear from you.

MR. SUMMERFORD: Well, rather than inconvenience the jury, can we approach the bench?

COURT: Yes, sir.

(WHEREUPON A BENCH CONFERENCE TAKES PLACE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE HEARING OF THE JURY.)

Q. May we proceed, Your Honor?

COURT: Yes, sir.

MR. SUMMERFORD: Note our exception, if Your Honor please.

COURT: All right.

Q. All right, with regard to marijuana identified as State's Exhibit Number one and two for identification, can you tell us what this Defendant told you?

A. He stated that he and Andy Langston had went to

Brownsville, Texas, and had brought back at that time, eleven pounds of marijuana. He stated that they had cut the marijuana down — and what I mean by they cut it down — they mean that they put it in individual bags. He stated that they had only gotten six pounds out of this eleven pounds because there was a lot of stems involved. He stated that he did not, again, did not want Mr. Keels to find out about him being arrested that night.

Q. Did he later, during the course of his conversation, make any statements with regards to the origin of the marijuana or how much he was to get from them?

A. He stated that he had gotten, I believe, two pounds of the marijuana, after they had cut it down. Mr. Langston had got a portion of it and he stated that there was some marijuana back at his residence, at his trailer.

Q. What was said with reference to the money coming from this particular transaction?

A. He stated that the money, the reason that he was selling this marijuana, was that he could have money to go to the beach to see his girlfriend, Kim Keels.

Q. And can you tell us, of your own knowledge, when he was booked at the Detention Center, how much money Mr. Humphries had on him?

A. He had a large sum of money. I would probably say seven or eight hundred dollars. I could tell you the exact figure off of his booking report. I don't have it here. It's in the sheriff's office.

Q. Did he have any other conversation with you with regard to the money he was gone make on this marijuana?

A. No, sir.

Q. Or where it had come from?

A. No, sir.

Q. Did he participate with you any further that evening?

A. Yes, sir. That evening he asked to meet with another officer, Officer Zickafoose, whom he knew. And I brought him to the Florence County City-County Complex Parking Lot, where where we met Officer Zickafoose. At that time, I left Mr.

Humphries in the car with Mr. Zickafoose. We unhandcuffed him so he could smoke a cigarette because he said he wasn't gonna run or give us no trouble. So he took us to a location which is known as Terry's Trailer Park and this was supposed to be the residence of Andy Langston, the subject who had went with him to Brownsville, Texas, and brought back this eleven pounds.

Q. All right, and could you tell us from your information what part of Texas Brownsville is in?

A. Brownsville is on the Gulf Coast and it's down near Mexico.

Q. Now, Mr. Propps, with regards to State's Exhibits Number one and number two for Identification, who seized them from the bed of this truck on the lot of the automobile place on that evening?

A. We both walked over to the truck and I recovered it from the truck.

Q. After you recovered those two exhibits, what did you do with them?

A. I took them and placed them in my automobile in my trunk.

Q. An when did you, when you removed them from your trunk, when was that and what did you do with them?

A. I brought them up to I.D. Officer Tisdale, I believe, on the 13th day of August, 1981.

Q. That was the following day?

A. Yes, sir.

Q. And did you ever come back in possession of them?

A. Yes, sir, it was later in the month, around the 21st or 22nd, I believe, of August. I received them back from Willie Tisdale.

Q. After Mr. Tisdale returned those two exhibits to you, what did you do with them?

A. They were placed in my desk drawer and locked.

Q. And where have they been since that time?

A. They have been there until today.

Q. All right. Thank you very much, Mr. Propps. Please

answer any questions Mr. Summerford has for you.

CROSS EXAMINATION BY MR. SUMMERFORD:

Q. Randy, what time did you receive this call?

A. It was approximately 8:30 in the evening.

Q. 8:30 P.M.

A. Yes, sir.

Q. And you say you received it yourself?

A. Yes, sir.

Q. And was it by telephone?

A. Yes, sir.

Q. Was this a confidential informant?

A. Yes, sir.

Q. Did he participate in the transaction at all?

SOLICITOR SALEEBY: Your Honor, I don't believe identifying anybody as being one or the other, identifying participants —

COURT: He didn't say identification. He asked did he participate. Up to that point I'll permit it.

A. Yes, sir.

Q. He participated?

A. Yes, sir.

Q. All right, sir. All right, sir, was it Phil Culbertson?

COURT: I'll sustain Solicitor's objection on that.

Q. Was he an employee of the sheriff's department?

A. No, sir.

Q. All right, sir. And where were you when you said that you received this call, Randy?

A. Pat and I were out on 76. We were checking out some other places that we had been watching.

Q. Well, I understood you to say it was telephonic?

A. Yes, sir.

Q. Did you receive a call on the radio?

A. We received a call from the Timmonsville Dispatch.

Q. Dispatch?

A. Yes, sir.

Q. And the dispatch gave you a number to call?

A. We gave them a number to call to tell the party where

they could call us at.

Q. All right. So at that time, I believe you made, you talked with him first, yourself, right?

A. Yes, sir.

Q. Did he tell you what time the meeting was gone take place?

A. Yes, sir.

Q. And he told you that a white motorcycle was gone come up with two white subjects on it?

A. Yes, sir.

Q. Now, did you testify at a preliminary hearing before Magistrate Smith in this case?

A. I have.

Q. Do you remember that?

A. Yes, sir.

Q. You testified under oath?

A. Yes, sir.

Q. Randy, at that time did you testify that there was a white motorcycle with one white male subject?

A. I don't —

Q. I've got a recording of it.

A. I don't recall, sir.

Q. Do you deny that you testified that —

A. No, sir, I do not deny it.

Q. You do not deny it?

A. No, sir.

Q. Were you testifying from your notes at that time?

A. Yes, sir, I was.

Q. And at the preliminary hearing, you don't deny that you testified that it was a white motorcycle with one white male subject was gone come up?

A. I don't recall, sir.

Q. All right, Randy, now if you don't mind, please, sir, if you'd get to the blackboard and draw the area in question, I'm talking about the Cale Yarborough car lot and sort of give the jury some idea of how the layout is, sir.

A. If you'll excuse my artistic ability. I'm not an artist but

I'll do the best that I can.

Q. That's all we ask.

A. All right, this is Highway 76. This is Highway 76 going towards Timmonsville. This is the Cale Yarborough building. This is the Cale Yarborough parking lot. And these are the automobiles that were on there. This is a wooded area and this is a field.

Q. All right, do you know the — what is this line —

A. This is a road right here. This is a road that turns down and goes into Botony Acres.

Q. All right, that's a public road?

A. Yes, sir.

Q. Has a stop sign there?

A. Yes, sir.

Q. What would you estimate the distance between that road and the field over to your right?

A. This road?

Q. Yes, sir.

A. To this field?

Q. Yes, sir.

A. Probably 75 yards.

Q. 75 yards. It's a right large lot, isn't it?

A. It's a good lot, yes, sir.

Q. And what would be the distance from the 76 highway to the building, the Cale Yarborough building?

A. Probably 20 yards.

Q. 20 yards?

A. Yes, sir.

Q. If you don't mind, put 75 yards running this way and 25 yards the other way. All right, sir, now indicate where the driveways are on there, going into the Yarborough lot, if you will, please, sir.

A. If I'm not mistaken — well, I know you can get into it over here and you can get into it, a portion of right over in through here.

Q. Now on the night of August the 12th, how many cars would you estimate was on the parking lot?

A. Probably 10 or 12.
Q. 10 or 12?
A. Yes, sir.
Q. And where were they located?
A. There were a few right here and there were a few over here.
Q. Indicate. Just put some cars there, the best that you can recollect.
A. Right. About three or four here. That's probably about as much as I can remember.
Q. All right, sir. Now, were any of those, when you first arrived, was there any vehicles other than your vehicle to come up on the scene that you can recall?
A. Are you talking about, Mr. Summerford, at the time of the arrest?
Q. No, sir. I'm talking about when you first arrived. Was there any customers or anybody looking over these cars or anything of that nature?
A. No, sir.
Q. Is the lot lit at night?
A. Yes, sir.
Q. Well-lighted?
A. Well-lit.
Q. All right, sir. Now, Mr. Pat Bowers, I believe, was riding with you that evening?
A. Yes, sir.
Q. And I believe you had let him off into the wooded area, in the field?
A. Right. Here in the wooded area, yes, sir.
Q. Now give us some idea about the distance between where his vantage point was and where you say that the motorcycle was located.
A. Mr. Bower —
Q. Did you see him there?
I mean, did you actually see him there?
A. No, sir, I put him in the woods.
Q. You put him in the woods?

A. Well, I put him out and he went into the woods.
Q. And you left and went where?
A. I went back down, back right in here.
Q. All right, sir, so you were behind the building, is that correct?
A. Yes, sir.
Q. You could not see Pat Bowers from where you were located?
A. No, sir. We were by radio contact only.
Q. All right, you had walkie-talkies with you?
A. That's the correct.
Q. And that's the only way that you had of communicating?
A. That's correct.
Q. Now was there any other law enforcement officer in the area at that time?
A. Yes, sir, there was.
Q. Who was that?
A. Officer Barry Prosser.
Q. Barry Prosser?
A. Yes, sir.
Q. And where was he located?
A. On down Highway 76, there's a road that pulls off known as Parker Drive. And there's some apartments down there known as Habitat 2000.
Q. How far is that from the Cale Yarborough?
A. I would say probably less than a quarter of a mile.
Q. Less than a quarter of a mile?
A. Yes, sir, about a quarter of a mile or less.
Q. Were you in contact with him by walkie-talkie also?
A. Yes, sir, he was in his deputy sheriff car and he has a radio.
Q. He was in a deputy sheriff automobile?
A. Yes, sir.
Q. All right. Now, could he see, were you ever at that point where he was?
A. No, sir, I informed him where to go.

Q. Do you know of your own knowledge whether or not he could see the Cale Yarborough Parking Lot from there?
A. To my knowledge I do not know, sir.
Q. All right, sir. Now, what time did you receive information that this motorcycle was coming up?
A. We received information around 8:30 and he said, that the informant would be there about 9:00.
Q. About 9:00?
A. Yes, sir.
Q. All right, sir. Did you go immediately there?
A. Yes, sir, after we received the call we went immediately there.
Q. Immediately there.
A. Yes, sir.
Q. Now what was the first thing that you observed after you got to your vantage point?
A. After I got to my vantage point I really couldn't observe anything.
Q. You couldn't observe anything?
A. No, sir.
Q. You don't know if this stuff here was on the motorcycle? You didn't see it? Is that what you're telling us?
A. No, sir, I cannot testify that I seen it on the motorcycle.
Q. And you can't testify as to who had it in whose possession?
A. No, sir, I cannot.
Q. And you can't tell us who got off of the motorcycle and what they did?
A. No, sir, I cannot.
Q. Now what was the very first thing that you saw?
A. At what time?
Q. After you left your vantage point. When you came around to the front of the building.
A. Okay, Officer Bower gave me a call over the walkie-talkie. He stated, come on in —
Q. Well, now don't tell me what he stated. Just tell me — you got a call.

A. Okay. He gave me a call on the walkie-talkie and I came around the building.
Q. You came around the building?
A. Yes, sir.
Q. Now, do you know approximately what time that was?
A. Approximately 9:00, maybe a few minutes after. It wasn't much after 9:00.
Q. You didn't check your time or anything of that nature?
A. No, sir. But it was close to 9:00.
Q. Now, were you in an automobile back there?
A. Yes, sir, I was.
Q. You were parked inside of your automobile?
A. Yes, sir.
Q. And was anyone else with you at that time?
A. Not in my automobile, no, sir.
Q. All right, sir. Now, after you received a communication from Offier Bower, you cranked up your automobile, is that correct?
A. Yes, sir.
Q. And you drove where now?
A. I drove around from here and pulled in right about —
Q. There?
A. Yes, sir.
Q. Now which direction was the front of your automobile facing?
A. I pulled it in, well, sort of at an angle. And it would have been facing, I guess, toward the building.
Q. Toward the building?
A. Yes, sir.
Q. All right. And, I mean, you stopped there, of course.
A. Yes, sir.
Q. But why did you stop there?
A. Because Levern Humphries was standing right about here.
Q. He was standing there?
A. Yes, sir.
Q. Now how was he dressed at that point?

A. He had on a pair of cut-off short pants, a t-shirt, and was barefooted.
Q. A t-shirt?
A. No, sir, he had on no shirt, only short cut-off short pants, no shirt, no shoes.
Q. In other words, he had on a pair of shorts, no shoes, no t-shirt, isn't that right sir?
A. Yes, sir.
Q. All right, sir. And you say that he was standing up between two new automobiles?
A. Yes, sir. Right in this area.
Q. All right, sir. And did you spot him immediately?
A. Yes, sir.
Q. You spotted him immediately.
A. Yes, sir.
Q. Was he the first person that you saw?
A. Yes, sir.
Q. All right. Now, did you see anyone else?
A. Yes, sir, I did.
Q. Where?
A. About, I guess right here.
Q. All right, sir. Now give us the approximate distance between where you say that Levern Humphries was and the motorcycle that you have just drawn on the blackboard.
A. Probably 55 or 60 feet.
Q. 55 to 60 feet?
A. Yes, sir.
Q. All right, sir put down there, if you don't mind, please, sir, 55 to 60 feet. Now, what did you observe — well, first let me ask you this — what did you do after you stopped your automobile there in front of the Cale Yarborough place?
A. I got out of my automobile. I told Mr. Levern Humphries, I said, don't move, Levern. And Levern didn't move. I walked over to him and put the handcuffs on him behind his back and informed him that he was under arrest.
Q. All right, sir, now did he make the first statement to you or did you make the first statement to him?

A. I made the first statement to him.
Q. When you told him you were placing him under arrest, did he ask you for what?
A. To my knowledge, no, sir.
Q. You don't remember?
A. To my knowledge, I don't remember him making a statement.
Q. He didn't say anything to you?
A. Not at that time, no, sir.
Q. Didn't say a word?
A. No, sir.
Q. All right, sir. Then what happened?
A. Deputy Prosser, who was here at the Habitat 2000 Apartments, had arrived on the scene. He had pulled in to the parking lot. Okay, Mr. Humphries was taken and put in Barry Prosser's patrol car. Pat Bower, Officer Bower, was over here with Gregory Hughes. He had him handcuffed. I walked over from here and talked with Greg.
Q. You say you placed Levern Humphries in Mr. Prosser's vehicle?
A. yes, sir.
Q. Now where did his vehicle come to?
A. It was pulled over here, probably right close to mine.
Q. Did he remain in the vehicle?
A. No, sir, he got out of his automobile.
Q. He got out of his automobile.
A. Yes, sir.
Q. And you placed Levern in the back seat of his car?
A. No, sir, I placed him in the front seat.
Q. In the front seat?
A. Yes, sir.
Q. All right, sir. Now, did he go with you over to where the motorcycle was?
A. No, sir. Mr. Bower, Mr. Hughes and myself were the only ones at the motorcycle.
Q. You say just the three of you were over there?
A. Yes, sir.

Q. Now at that point when you went over to the motorcycle, Levern Humphries had not said anything to your knowledge?

A. No, sir. To my knowledge, no.

Q. Not a word?

A. No, sir.

Q. All right, sir. Now are you quite sure you didn't place Mr. Humphries in your automobile first?

A. Yes, sir, I'm almost positive that I put Mr. Humphries in Mr. Prosser's car.

Q. Now when you came around the building, did you see anyone leaving the area in question?

A. No, sir, I did not.

Q. You never saw anyone leave from the area where the motorcycle was?

A. No, sir, I did not.

Q. Did you hear any type vehicle leave?

A. No, sir, I did not.

Q. Is it possible someone could have left and come out some other way other than going back to this public road which is on the left of 76 there?

A. Yes, sir.

Q. Is it possible?

A. Yes, sir.

Q. Did you see Phil Culbertson on that lot that night?

A. No, sir, I did not.

Q. Did you know, of your own knowledge, whether or not Phil Culbertson was on that lot?

A. Yes, sir, I did.

Q. Was he on that lot?

A. Yes, sir, he was.

Q. He was on the lot?

A. Yes, sir.

Q. All right, sir. How did he get to the lot?

A. He drove there, I guess. I didn't take him.

Q. You did not take him?

A. No, sir.

Q. Did you see his automobile?
A. No, sir, I did not.
Q. You had no conversation with him?
A. No, sir, I did not.
Q. To your knowledge, did anyone else have conversation with him?
A. To my knowledge, no, sir.
Q. All right, sir. Now, when you left your, or Mr. Prosser's automobile, you walked over to where the motorcycle was?
A. Yes, sir.
Q. And what did you see there?
A. I saw Gregory Hughes, handcuffed behind his back.
Q. He was handcuffed?
A. Yes, sir.
Q. And where was he standing relation to the motorcycle?
A. They were, both of them were right about in here. Like this is the motorcycle and say this was the path and this was Greg Hughes.
Q. Greg Hughes. All right, sir. Now, was there a conversation going on between them at that time?
A. Yes, sir, there was.
Q. What did you hear?
A. I didn't hear anything. I just walked over to them.
Q. And they quit talking?
A. They had just about quit talking, yes, sir.
Q. All right, you know that they were talking until you came up and there was no conversation?
A. Yes, sir.
Q. Did Gregory Hughes make any statement to you at that time?
A. To me, no, sir.
Q. Did he make any statements in your presence at that time?
A. No, sir.
Q. All right. So then what happened?
A. We then took Mr. Hughes back to Mr. Prosser's automobile. Mr. Humphries was then gotten out of Mr.

Prosser's automobile and was put in the passenger's seat of my automobile and I got into the driver's side and Officer Bowers got into the back seat.

Q. Now, who was the senior officer there?

A. Me.

Q. All right. In other words, you were directing as to what should take place, is that correct?

A. That's correct.

Q. Did you tell Officer Bower or anyone else to take Gregory Hughes back to the Detention Center?

A. I directed Mr. Barry Prosser to take Gregory Hughes to the Detention Center.

Q. Now, then what happened? Tell me what happened then. How did you do that?

A. I just told Barry, I said, Barry, take Greg on to the Detention Center. And he took Greg on to the Detention Center.

Q. Was he standing up there with you and Pat?

A. No, sir. He wasn't over here. We walked back over to the automobile.

Q. All of you?

A. Gregory Hughes, Pat Bower, and myself walked back over to Mr. Prosser's automobile, who was there with Mr. Humphries.

Q. And then you searched the motorcycle?

A. Yes, sir, we had searched the motorcycle prior to that.

Q. Oh, you had already searched the motorcycle at that point, before you sent Gregory Hughes to the Detention Center?

A. Yes, sir. Yes, sir.

Q. You had searched the motorcycle?

A. Yes, sir.

Q. All right. Did you find anything in the motorcycle?

A. No, sir.

Q. Did you search Gregory Hughes?

A. No, sir, I did not.

Q. Was he searched in your presence?

A. No, sir.
Q. Was he searched prior to your coming there, or do you know of your own knowledge?
A. I couldn't say, Mr. Summerford. I do not know.
Q. You do not know?
A. No, sir.
Q. There's no question about that?
A. There's no question about that.
Q. Was he searched later, to your knowledge?
A. To my knowledge, yes, sir, he was searched later.
Q. But you did not search him before you sent him to the Detention Center?
A. I did not, no, sir.
Q. Did you find anything on him when you searched him at a later time?
A. Yes, sir.
Q. What?
A. A bag of marijuana.
Q. And where was that?
A. In his pocket.
Q. And that's on Gregory Hughes?
A. Yes, sir.
Q. All right. Now it's my understanding, again, now, Randy, you didn't have any conversation with Gregory Hughes at all, did you?
A. We may have talked a little bit but as far as any real questions, Pat had already talked to him when I got around over there to him.
Q. Did you or Pat, either one of you, apprise Mr. Gregory Hughes of his Constitutional Rights or what you call Miranda Warning?
A. I believe that he had been advised of his rights.
Q. You believe that or you're assuming that?
A. I'm assuming that, sir.
Q. You're assuming that?
A. Yes, sir.
Q. Well, let me ask you, did you apprise him?

A. No, sir.
Q. Did Pat Bowers apprise him in your presence?
A. Not in my presence.
Q. Not in your presence?
A. No, sir.
Q. All right. Now is it your usual procedure that that's the first thing that you do after you place a man under arrest or place handcuffs on him?
A. In this particular incident, Mr. Bowers had already handcuffed the man, had already placed him under arrest. And most of the time, or almost every time, we advise them of their rights off of our Miranda Card, which I stated earlier.
Q. All right, so it is then your usual procedure that that's what you do?
A. Yes, sir.
Q. Now when you say, almost every time, what do you mean by, almost every time?
A. Well, if I'm the arresting officer, if I make an arrest, say if I were to arrest you, as soon as I would handcuff you and inform you of what you were charged with, I would advise you of your rights, if I was going to question you.
Q. That's your usual procedure?
A. If I was not going to question you, I wouldn't advise them of their rights because I wouldn't talk to them.
Q. You wouldn't talk to them?
A. No, sir.
Q. All right, sir. Now after you sent Gregory Hughes to the Detention Center, what did you do then?
A. I got in my automobile, Mr. Bower got in the back seat of the automobile.
Q. And that was in your automobile then?
A. My green Ford, yes, sir.
Q. Now when did you take Levern Humphries out of Mr. Prosser's automobile and put him in your automobile?
A. When we were getting ready to take Mr. Hughes to the Detention Center.

Q. All right, who took him out?
A. We just asked him to get out and he got out.
Q. All right. Did you ask him to get out?
A. Yes, sir, I believe I did.
Q. And you walked him over and put him in your automobile?
A. Yes, sir.
Q. In the passenger side there also?
A. Yes, sir.
Q. All right, sir, and then what happened?
A. At that time, Mr. Bower got into the back seat, I got into the driver's side of the automobile. I then went into my badge case, I turned on my inside light in my automobile, advised him of his Constitutional Rights, which I have stated earlier, off of my Miranda Card.
Q. All right, at that point then, you say you read the card to him?
A. Yes, sir, I did.
Q. What did he say when you told him that?
A. I read him all of the Constitutional Rights. At the end of reading these rights, I asked him did he have any question in regards to what I had stated to him and he stated, no.
Q. And you specifically remember having done that rather than following your usual procedure?
A. Yes, sir, because I was gonna talk with Levern Humphries.
Q. Why were you gone talk to Levern?
A. From the information that we had received earlier.
Q. All right, sir. Now the information that had received earlier from this informant, did you know at that time that Levern Humphries was gone be on that motorcycle?
A. Yes, sir, I believe we did, I did.
Q. Now, I don't want you to believe.
A. Yes, sir, I did.
Q. Well, why did you say, I believe, before?
A. We talked to the C.I. twice, the confidential informant. And the first time he told us about the approximate time and

then the second time he told us of the direct time.
Q. Now why didn't you tell us that before, Randy?
A. You didn't ask me, sir.
Q. All right, sir, I asked you when you talked with him.
A. About 8:30.
Q. All right, was there another time, you say?
A. Um, yes, sir, we did talk a little bit.
Q. When?
A. Probably twenty minutes till nine.
Q. Now did your confidential informant tell you where he was?
A. Well, at this time, the second time we talked, Mr. Bower talked with the informant. I did not.
Q. All right, sir. Now where was Mr. Bower when he talked to the confidential informant?
A. He was outside of my presence.
Q. Was it a telephone or was it by radio or what?
A. It was by telephone, I believe.
Q. It was by telephone?
A. Yes, sir.
Q. All right, sir, now where were you?
A. Out on Highway 76.
Q. Where?
A. At the Hillcrest Superette.
Q. Hillcrest Superette?
A. Yes, sir.
Q. And did you have a phone number to call the informant?
A. Yes, sir.
Q. There was a phone number?
A. Yes, sir.
Q. All right, sir. Was it in the County of Florence?
A. Yes, sir, it was.
Q. It wasn't long distance?
A. No, sir.
Q. All right, sir. Now you say that — had you already notified Officer Deputy Sheriff Prosser to go to his vantage point at that point?
A. Yes, sir, I did, I had.

Q. When did you notify him?
A. At 8:30, approximately 8:30.
Q. And where was he at that time?
A. He was on routine patrol.
Q. And do you know if he went back to the Sheriff's Department or to the Detention Center?
A. At what time.
Q. After you, or during the period of time that you contacted him.
A. No, sir. I contacted him by radio.
Q. Where was he though? What was his, as ya'll say, his ten-twenty?
A. He was probably on Second Loop Road, off of Second Loop Road.
Q. Probably?
A. Yes, sir. He was a short distance away.
Q. Just a short distance?
A. Yes, sir.
Q. All right, sir. Now you had no idea that you were going to receive this phone call from this confidential informant until the 8:30 phone call, is that correct?
A. No, sir. Earlier that evening we had no knowledge that we were gone get a call from him until we got it.
Q. Had you not had a previous conversation with this individual?
A. You mean that day?
Q. Anytime prior to 8:30 that P.M.
A. Are you talking about that day?
Q. Any time prior to that.
A. Yes, sir, we had talked previous to that, yes, sir.
Q. You had talked previous?
A. Yes, sir.
Q. Was it that same day?
A. No, sir. I had not talked with him that same day.
Q. You had not talked with him that same day?
A. No, sir.

Q. All right, to your knowledge had anyone else with the law enforcement talked with him that day — Pat Bowers or Mr. Prosser?
A. I believe Pat Bower had talked to him that day.
Q. You're not sure of that?
A. I'm almost positive, yes, sir.
Q. Almost positive?
A. I'm positive, Mr. Summerford.
Q. All right. This horseshoe game is getting to me now, almost and that sort of thing.
A. Okay.
Q. Now you're positive then that Pat did talk with him that day?
A. Yes, sir.
Q. And you knew that there was going to be a sale that night then, right?
A. No, sir.
Q. Well, you reasonably expected a sale that night, didn't you, or sometime that night?
A. We expected one in the near future. I'm not going to say that particular night.
Q. All right, in the near future.
A. Yes, sir.
Q. And you do have access to numerous recording devices, don't you?
A. Yes, sir.
Q. And, in fact, you really and truly, you have sort of up-dated equipment, don't you?
A. We have just received some up-dated equipment.
Q. In fact, you've got equipment now that you can put on a man and listen and record his whole conversation, the buy and the whole works, haven't you?
A. We got that within the last two or three weeks.
Q. All right. You didn't have it before then?
A. No, sir.
Q. But you have recorders?
A. We have tape recorders, yes, sir.

Q. All right. You tell me that Levern said that he wanted to give you some information?

A. Yes, sir.

Q. Now what was the very first thing that Levern Humphries said, from the time you drove up until you read him his rights?

A. He didn't say anything to me.

Q. Wouldn't it be a fair statement that Levern Humphries had not opened his mouth then from the time you drove up until you got in the car, took him out of his car, out of Mr. Prosser's car, put him in your car, and got in there and started reading his rights?

A. I would say that he had talked, but —

Q. Well, with whom had he talked?

A. He had talked with Pat and he had probably talked with Mr. Prosser.

Q. Well, wouldn't you have known it? Weren't you there?

A. I was not right with Mr. Humphries every time that he was with Mr. Prosser or when he was with Mr. Bower.

Q. You weren't?

A. No, sir, not all the time, not right in that vicinity with him.

Q. Now, Mr. Prosser did not know what had gone on when you put him in his car, did he?

A. He knew that a bust had went down.

Q. But he didn't know who was involved, did he?

A. No, sir.

Q. You didn't communicate that on the air, did you?

A. No, sir.

Q. Well, what did you tell Mr. Prosser? Did you give him some numbers to show that a bust was going to be made?

A. Whenever Officer Bower called me, Mr. Prosser was on the same radio frequency that we are. And he heard what Mr. Bower's conversation was with me and at that time Mr. Prosser also proceeded to the location.

Q. Did you tell Mr. Prosser where to go?

A. Mr. Prosser knew where to go.

Q. You had already arranged it?
A. I had told Mr. Prosser where the deal was going down.
Q. When did you tell him that?
A. On the radio.
Q. I mean when?
A. When I had placed him at the Habitat 2000 Apartments.
Q. Do you remember the time that you placed him? Was that the phone call at 8:30?
A. Yes, sir, right after the 8:30 phone call, Mr. Prosser was placed at that location.
Q. And you told him that on the air, that there was gone be a bust?
A. No, sir.
Q. What did you tell him?
A. I told him to meet me.
Q. Then you went there and met him?
A. I went and met him, yes, sir.
Q. Oh, I see. I misunderstood lyou, Randy. I'm sorry Then what you did, you went and met Mr. Prosser at the place where you put him?
A. I dropped Officer Bower out of the automobile.
Q. Right.
A. Okay, he had a hand-held unit, walkie-talkie.
Q. Right.
A. Okay, I went and met with Mr. Prosser and told him where to get and where the deal was going down. Then I went right back, behind the building. It probably took two minutes.
Q. You went back behind the building?
A. Yes, sir.
Q. I'm talking about when he was parked down here.
A. At the Habitat 2000. Yes, sir, I told him that's where I wanted him to stay until he heard to come in.
Q. All right, sir.
A. Okay.
Q. And then you left him and went back down the road and parked behind the Cale Yarborough?

A. Behind the place, yes, sir.
Q. All right. Now you say that to your knowledge then, Mr. Levern Humphries did not say anything to you until after you had read him his Miranda Warnings?
A. After I had placed him in the car and read him of his rights, advised him of his rights.
Q. All right, sir. Now after you read him his rights, what was the first thing that you recall that he said?
A. He said, what have I got to do to keep from going to jail, to keep Mr. Keels from finding out that I'm in trouble.
Q. What did you tell him?
A. I told him that, you know, he would have to give us some help.
Q. Have to give you some help?
A. Yes, sir, give us some information.
Q. All right. And if he gave you some information and some help that you were gonna keep him out of jail that night —
A. No, sir.
Q. — and not inform Mr. Keels?
A. No, sir.
Q. What did you tell him?
A. I told him that, by procedure, he had to go to the Detention Center that night. If he gave us information as far as the newspaper, we have nothing to do with the newspaper, they can go to the Detention Center and get anybody's name off of the book. I informed him of this. I told him, you know, he asked what could he do to keep it out of the paper and I told him there was no way to keep it out of the paper if they wanted to print it.
Q. All right, what else did you tell him?
A. He stated that he would, I asked him about — well, then he stated, I want to talk to you. And I said, okay.
Q. Now wait a minute. You say that he wanted to know, he wanted to know what he could do to keep from going to jail that night?
A. Yes, sir.

Q. And to keep Mr. Keels, his girlfriend's father, from finding out about it.
A. Yes, sir.
Q. And your answer to that was what now?
A. I told him that he had to go to the Detention Center that night.
Q. Now wait a minute. I thought you said a moment ago that he had to help you.
A. No, sir, not to keep him out of the Detention Center that night.
Q. Well, let's go back and tell me exactly what he did tell you.
A. Okay. You want the conversation that he told me?
Q. Yes, sir.
A. He stated that Greg Hughes had set up the marijuana deal and that Gregory Hughes was going to receive —
Q. That's the first thing he said?
A. Mr. Summerford, you asked me about the conversation.
Q. No. I'm sorry if I'm confusing you now. Let's go back and start over again because I don't want to confuse you. I do not. I just want to know the truth about it. What was the first thing that Levern Humphries said to you after you read him the Miranda Warnings?
A. He said, what can I do to keep from going to jail tonight and keeping my name out of the paper.
Q. All right.
A. Okay.
Q. Now what was your response to that?
A. I told him, I said, Levern, by procedure, we have to carry you to the Detention Center and book you tonight. As far as the newspapers concerned, we have nothing to do with that. They print what they want to print, when they want to print it. They can get it off of the booking report in the Detention Center. We have nothing to do with that.
Q. All right. Did you tell him anything else?
A. He said, well, what can I do, what can I do? This was

the way he was into the thing. And I told him that if he could give us some information.

Q. Give you some information?

A. Yes, sir, he could help us.

Q. All right, and you didn't promise him anything? You didn't say, if you'll help me, I'll help you?

A. Yes, sir.

Q. You told him that?

A. Yes, sir.

Q. All right, now how were you gone help him?

A. I would talk to the solicitor and let the solicitor handle it and tell him what —

Q. You told him that?

A. Yes, sir. I told him that I couldn't deal. Mr. Saleeby is the solicitor and Mr. Saleeby is the one that handles any dealing.

Q. So he really, he would just have to — you said you would talk to the Solicitor?

A. Yes, sir.

Q. About what?

A. If he helped us, I would tell the solicitor what he had done.

Q. In other words, you said, if you will help us, then I will talk to the solicitor.

A. Yes, sir, I've answered that aout three or four times.

Q. All right, sir. I'm sorry. I'm a little slow.

A. Okay.

Q. But you didn't tell him what you were gone talk to the solicitor about?

A. I told him that I would tell him what he had helped us with. For example, if he would tell me that a man had fifty pounds of marijuana and I busted him that night, I would go to Mr. Saleeby and say, Mr. Saleeby, Mr. Humphies gave me information tonight that led to a fifty pound arrest. And then Mr. Saleeby would then enter into any deals that would be entered into. I can't do it. The solicitor's office does it.

Q. All right. But your statement is that you didn't tell him that you were gonna do anything then, other than talk to Mr.

Saleeby? That's all you said?
A. That's all I could do.
Q. All right, sir. Now, think just a minute, Randy, and think and see if you can remember having told him anything else now, any other promise or anything else that you were gonna do to help him.
A. No, sir, nothing that I can remember, no, sir.
Q. All right. Did you talk with Mr. Saleeby about that?
A. No, sir, because nothing came out of it that night.
Q. All right, sir. Now what else was said between you and Levern Humphries that night, before you left the lot now.
A. Okay. We were talking and he stated that he and Andy Langston had went to Brownsville, Texas and they picked up 11 pounds of marijuana. They had brought it back to Florence.
Q. He and Andy Langston?
A. That's correct.
Q. All right, had gone to Brownsville, Texas?
A. That's correct.
Q. Did he say when?
A. Yes, sir, they had went about a week before.
Q. About a week before?
A. Yes, sir.
Q. He didn't tell you a date — did he tell you that or you knew that?
A. I knew that but he verified it that night.
Q. All right, and you already knew something about Brownsville, Texas, hadn't you?
A. Yes, sir, I did.
Q. And is it not true that you were looking for Andy Langston? You were looking for him, weren't you?
A. I was looking for Levern Humphries.
Q. All right, sir. Is it not true, sir, that you were looking also for Andy Langston?
A. My first bit of information was that Levern Humphries was in Brownsville, Texas.
Q. I didn't ask you that. That was not my question now.

A. Okay.

Q. My question was, isn't it true that you were looking for Andy Lanston?

A. Later, yes, sir.

Q. That night?

A. After Levern Humphries gave me the information. Not that night, sir, no, sir.

Q. Isn't it true that you had information that Andy Langston had been to Brownsville, Texas?

A. Yes, sir, with Levern Humphries.

Q. Well, you want to put in Levern Humphries every time, don't you?

A. You wanted to know about it.

Q. I didn't ask you that.

A. They were together.

SOLICITOR SALEEBY: You Honor, I believe he's arguing with the witness.

COURT: Yes, sir, don't argue with the witness. Let's proceed.

Q. I don't mean to argue with him if Your Honor please. Let me ask you again now, Randy.

A. Okay.

Q. That was not responsive to my answer now —

SOLICITOR SALEEBY: If Your Honor please, I believe he's lecturing the witness.

COURT: Yes, sir.

Q. I move to strike it.

COURT: Yes, sir, Mr. Summerford, if you'll just ask the questions, we'll have no problem. Proceed.

Q. All right. If Your Honor please, I move to strike —

COURT: Just ask the questions.

Q. Could I state it for the record?

COURT: Yes, sir.

Q. I move to strike the answer that the witness gave, that it was not responsive to my question.

COURT: I deny your motion. Now ask your question.

Q. All right. Now, Randy, did you receive information

before that night that Randy or Andy Langston, had gone to Brownsville, Texas?

A. Yes, sir.

Q. You had.

A. Yes, sir.

Q. All right. And when did you receive that information?

A. The same time I received the information, or a little bit after, that Levern Humphries was in Brownsville, Texas. You asked me when, Mr. Summerford. I'm trying to tell you, it was a short time after that.

Q. All right, sir. Now we've got it that you received information that Levern Humpshries was in Brownsville, Texas.

A. Yes, sir.

Q. All right. Now would you please tell me when you received that information then?

A. About a week prior to this.

Q. Well, did you say about a week?

A. It could have been seven days; it could have been nine days.

Q. You didn't make notes of it is what you're saying?

A. No, sir, we had received the information that he was in Brownsville, Texas, with Andy Langston.

Q. With Andy Langston.

A. Yes, sir.

Q. All right. Now, did you make the statement to Levern Humphries that you wouldn't send him back to Brownsville, Texas?

A. Mr. Summerford, I have no way to send him back to Brownsville, Texas.

Q. I just asked a question. Did you make that statement?

A. No, sir, to my knowledge, I did not.

Q. You deny that you made the statement to Levern Humphries that night — I will not send you back to Brownsville, Texas?

A. Yes, sir, I deny that.

Q. All right. Did you ask Levern Humphries the question that night, have you been to Brownsville, Texas?

A. Yes, sir, I did.
Q. You asked him?
A. Yes, sir.
Q. All right. And he denied it, didn't he?
A. No, sir.
Q. Oh, he told you he'd been to Brownsville, Texas?
A. Yes, sir.
Q. Oh, I see. All right, sir, now what was the very next thing that was said?
A. That's when he stated that Greg Hughes had set up the marijuana deal for that night. That Gregory Hughes was to receive some money from the marijuana deal that night. He stated, as I already stated once before, he and Andy Langston had went to Brownsville, Texas, and brought back 11 pounds which they had cut up. And they had only gotten six pounds of marijuana out of this 11 pounds, due to the fact that it was so stemy. He stated that he was going to sell the marijuana that night to make money to go to the beach to see Kim Keels.
Q. That he was going to make money so he could go to the beach to see Kim Keels?
A. Yes, sir.
Q. How much was he gone sell that marijuana for, do you know that?
A. No, sir, I don't know.
Q. Your informant didn't tell you that?
A. No, sir.
Q. You didn't give the informant any money?
A. No, sir.
Q. Now how much money did Levern Humphries have on him when he was arrested?
A. I would say probably seven or eight hundred dollars. He had a lot of money.
Q. Seven or eight hundred dollars?
A. Maybe more than that.
Q. The truth of the matter it was eleven hundred, wasn't it?
A. As I say, it was seven or eight hundred dollars. It could be more.

Q. Didn't you make a record of it?
A. It's on the booking report. Whenever the Detention Center books somebody in, they put it on there and we run a copy.
Q. Now, Randy, did you make the statement at the preliminary hearing that you didn't think that Levern Humphries had anything to do with the actual sale?
A. No, sir, to my knowlege, no, sir.
Q. You did not?
A. That he did — he knew of the sale. He was a participant in the sale.
Q. He was a participant? How do you know that? I mean you weren't there, you didn't actually see it, did you?
A. No, sir.
Q. You never saw him in possession of the stuff?
A. I did not.
Q. All right, sir.
A. The only thing I'm basing it on is voluntary statements.
Q. All I want to know is what you saw.
A. All right.
Q. Now did I understand you to say then you left the parking lot at Cale Yarborough's and where did you go then?
A. He wanted to meet Officer Zickafoose at the Florence City-County Complex Parking Lot.
Q. He wanted to meet with him?
A. He wanted to talk with him, yes, sir.
Q. Did you let him do that?
A. I called Officer Zickafoose and he met us at the City-County Complex Parking Lot.
Q. And you had not booked him at that point?
A. No, sir.
Q. You had not?
A. No, sir.
Q. And what did he say in front of Officer Zickafoose?
A. He got into the automobile with Officer Zickafoose.
Q. By himself?
A. By himself.

Q. And they had a conversation?
A. Yes, sir.
Q. And did he get back into your automobile?
A. No, sir.
Q. Where did he go then after that?
A. He stayed in Officer Zickafoose's automobile. I gassed my automobile up at the gas pump. Officer Bower and myself then got into Officer Zickfoose's car.
Q. All right, sir. Where did you go then?
A. He took us to where Andy Langston was supposed to live, out at Terry's Trailer Park.
Q. What trailer park?
A. Terry's Trailer Park.
Q. All right, sir. Now, he did that voluntarily?
A. Yes, sir.
Q. Did you promise him anything to get him to take you out there?
A. No, sir, just the same thing about anything he did I would tell the solicitor that he had helped us and what it was.
Q. That's the only thing you promised him then?
A. Yes, sir, I couldn't promise him anything.
Q. All right. Now, you went to Terry's Trailer Park. Now can you describe that trailer, tell us what that trailer was like?
A. It was a trailer down in the hill. If I'm not mistaken it was a blue and white trailer.
Q. What kind?
A. Blue and white in color. And it had a number on it but I can't recall the number at this time. It's been about two months ago.
Q. You didn't make a note of that?
A. Yes, sir, I did. I have it down stairs.
Q. You have it down stairs?
A. Yes, sir.
Q. But you didn't go inside the trailer?
A. No, sir, the power was cut off and no one was living in it.
Q. You say the power was cut off? Did you check it out later?

A. Yes, sir, I checked it out about three o'clock in the morning.

Q. Was it Andy Langston's trailer?

A. To my knowledge, Andy Langston had lived there but he was not at that time.

Q. Had lived there?

A. Yes, sir.

Q. All right. Let me ask you again, now, I'm not sure on this, Randy. Isn't it true that you had been looking for Andy Langston for some time?

A. No, sir.

Q. Huh?

A. No, sir.

Q. You had not been looking for him?

A. No, sir. I can tell you when I was looking for him. But not for some time.

Q. Well, were you looking for him that night? Let me ask you that.

A. After I had arrested Levern Humphries I was looking for Andy Langston.

Q. All right. But you were not looking for him until after you arrested Levern Humphries?

A. That's correct.

Q. No question about that?

A. No question about that.

Q. All right. Now, your statement is that whoever made the contact with you by telephone then told you that Levern Humphries was going to be at that sale at Cale Yarborough's place?

A. Yes, sir.

Q. And that person was Phil Culbertson, wasn't it?

SOLICITOR SALEEBY: Objection, Your Honor.

COURT: Objection sustained.

Q. All right, well, let me ask you this: Did Phil Culbertson ever tell you that Levern Humphries was going to be there that night?

SOLICITOR SALEEBY: Same objection, Your Honor.

COURT: Objection sustained.

Q. I don't know whether I've covered this or not, Randy, but let me see if I'm correct in this. Nobody appeared at that parking lot, Cale Yarborough Parking Lot that night, except you, Pat Bowers, Mr. Prosser, Phil Culbertson, Levern Humphries and Gregory Hughes?

A. While we were there?

Q. Yes, sir.

A. Yes, sir, that's all.

Q. Nobody else appeared?

A. No, sir.

Q. No spectators, no customers, no nothing?

A. No, sir.

Q. Six people was all that appeared on that lot that night?

A. Yes, sir.

Q. All right. After you left the trailer park, where did you go then?

A. To the Florence Detention Center.

Q. All right. Was there any conversation between you and Levern on the way out to Andy Langston's trailer park or where he use to live?

A. Yes, sir.

Q. What was that conversation?

A. I asked him how much of the marijuana that Andy had gotten. He said they had split it, they had split it up.

Q. Split it up.

A. Yes, sir.

Q. All right. Was there any other conversation?

A. I asked him where Andy may keep the marijuana.

Q. Said what?

A. Where he may keep it at. He said in his closet.

Q. In his closet?

A. Yes, sir.

Q. All right. Any other thing?

A. He stated that, I asked him had he ever been there before; he said, yes.

Q. Had been where?

A. To Andy Langston's trailer.
Q. Said that he had been to the trailer before?
A. Yes, sir.
Q. Anything else?
A. That he and Andy Langston had used marijuana and that he had seen marijuana at the trailer before.
Q. All right. Anything else?
A. No, sir. Then we brought him back to the Detention Center.
Q. Did he say anything on the way back?
A. No, sir.
Q. Absolutely nothing?
A. No, sir, you know, general conversation but as far as anything to the case, no.
Q. All right, sir. That's all you can recall?
A. When we got to the Detention Center.
Q. Then what happened?
A. When we got to the Detention Center he stated that he would get back in touch with me when he got out of jail the following day or two.
Q. He'd get back in touch with you?
A. Yes, sir.
Q. Nothing else?
A. No, sir.
Q. Why was he gone get in touch with you, Randy?
A. He stated that he may be able to give us some information.
Q. And you still hadn't promised him anything other than you were gone talk to the solicitor?
A. No, sir.
Q. That's it?
A. Yes, sir.
Q. All right. Hold on just a minute, please. Randy, did I understand you to say earlier that Levern told you that he had some marijuana at his trailer?
A. Yes, sir, at the trailer he was staying at.
Q. Did he tell you where that trailer was?

A. No, sir.
Q. Did you ask him?
A. Yes, sir.
Q. What did he tell you?
A. He said he would rather not say because there was a young lady back there and he didn't want her to get involved.
Q. He'd rather not say.
A. That's correct.
Q. And you didn't do anything about that?
A. He wouldn't tell me where he was staying, Mr. Summerford.
Q. Did you make inquiries from anyone else?
A. Yes, sir — to no success.
Q. No success?
A. No, sir.
Q. Where did he live ordinarily?
A. He ordinarily stays with his grandmother in Johnsonville or outside of Johnsonville.
Q. That was the address that he gave you that night, wasn't it?
A. What, sir?
Q. When you booked him?
A. Yes, sir, he gave his grandmother's address.
Q. And he told you that's where he lived, didn't he?
A. No, sir.
Q. He didn't tell you that?
A. No, sir, he said he was staying with a young lady at a trailer and he didn't want her to get involved with the thing and that's why he wouldn't tell us where she was staying, or where he was staying.
Q. All right, sir. And he had no marijuana on him, did he?
A. No, sir, he had no marijuana on him.
Q. Thank you, Randy.

SOLICITOR SALEEBY: No questions. Come down.

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TESTIMONY OF PHILLIP M. CULBERTSON

(WHEREUPON THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE JURY.)

MR. SUMMERFORD: Mr. Culbertson.

PHILLIP MARK CULBERTSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR SUMMERFORD:

Q. You are Phil Culbertson?

A. Yes, sir.

Q. And where do you reside, Phil?

A. 37 Kings Road, Quinby, Florence.

Q. And what are you doing now? Are you a student, I believe, at Clemson?

A. Yes, sir.

Q. And I believe you were served with a subpoena about four o'clock this morning, is that correct?

A. Yes, sir.

Q. And you haven't had any sleep since that time, is that correct?

A. Yes, sir.

Q. Now, Phil, it's my understanding that you didn't particularly want to come to court, is that correct?

A. Yes, sir.

Q. And are you a student at Clemson University, a full-time student?

A. Yes, sir.

Q. But your home is in Florence, South Carolina, is that correct?

A. Yes, sir.

Q. Now, have you ever been arrested for any type drugs?

SOLICITOR SALEEBY: Your Honor, I don't know how that's relevant.

Q. We're gone tie it in, if Your Honor please.

COURT: All right, sir, now, it's not admissable unless you can tie it in.

Q. Well, I think I can tie it in, if Your Honor please.

COURT: All right, sir, approach the bench.

(WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUTSIDE THE HEARING OF THE JURY.)

Q. Now, have you ever been arrested for any type drugs, violations?

A. I've never been convicted but I have been arrested.

Q. By whom were you arrested?

A. By Pat Bower and I did not know the other officer's name.

Q. Do you see him? Is that Mr. Randy Propps right there?

A. Sir? Repeat it, please?

Q. Is that Mr. Randy Propps? Were you arrested by him?

A. He was there later. He came later.

Q. All right. Now, have you ever talked with the solicitor? Have you ever met him before?

A. No, sir.

Q. Never have met him before?

A. No, sir.

Q. And you didn't work out any deal with anybody, did you, I mean in the solicitor's office?

A. Not with the solicitor.

Q. You did not? Did you work out a deal period?

A. Yes, sir.

Q. With whom?

A. With Randy Propps and Pat Bowers.

Q. Randy Propps and Mr. Bowers?

A. Yes, sir.

Q. All right, now what was that deal?

A. That if I would turn two people for them they would drop all charges.

Q. If you would turn two people to them that they would drop all charges against you?

A. Yes, sir.

Q. All right. Now, Phil, I want you to go back to August the 12th, 1981. Were you in Florence then?

A. Yes, sir.

Q. Did you have a telephone communication at approximately 8:30 P.M. on that day — that is the date of August the 12th, 1981, with Mr. Randy Propps?
A. Yes, sir.
Q. All right. Did you give him some information?
A. Yes, sir.
Q. What did you tell him?
A. I told him that the buy was set up at the Honda-Mazda place.
Q. The buy was set up at the Honda-Mazda place?
A. Yes, sir.
Q. Is that on 76?
A. Yes, sir.
Q. The Cale Yarborough place?
A. Yes, sir.
Q. Did you tell him what time the buy was set up?
A. We didn't have no specific time. It was just supposed to be then, around that time.
Q. It was supposed to be then?
A. Around 8:30 or 9:00.
Q. 8:30 or 9:00 and you talked to them about 8:30 at night, is that correct?
A. Yes, sir.
Q. All right, now, did you tell them how they were going to get, or whoever it was was going to get to the Honda place, the Mazda place?
A. I knew he would be on a motorcycle.
Q. You knew he was gone be on a motorcycle?
A. Yes, sir.
Q. Now did you tell him who was gone be on a motorcycle?
A. Yes, sir.
Q. Who did you tell him?
A. Greg Hughes.
Q. Greg Hughes?
A. Yes, sir.
Q. All right. Did you tell him he was gone be on a white motorcycle?

A. Yes, sir, I knew the motorcycle.
Q. Did you mention the name, Levern Humphries, to Mr. Randy Keels at any time?
A. No, sir.
Q. It never was mentioned?
A. No, sir.
Q. All right. Did you ever mention the name, Levern Humphries, to Mr. Pat Bowers?
A. No, sir.
Q. You did not?
A. No, sir.
Q. All right. Were you there at the Honda-Mazda place when Levern Humphries and Gregory Hughes came up?
A. Yes, sir.
Q. All right. Could you see a brown paper bag when they drove up?
A. Not to my knowledge, I couldn't.
Q. Why couldn't you see it?
A. I really don't know. I just wasn't really paying attention. They came up.
Q. Have you ever seen a brown paper bag in Levern Humphries possession?
A. No, sir.
Q. You never did?
A. No, sir.
Q. All right. Did you at any time take a brown paper bag and place it into a Toyota truck?
A. Yes, sir, it was a Mazda truck.
Q. I mean a Mazda truck. I didn't mean a Toyota. A Mazda truck?
A. Yes, sir.
Q. You placed it there yourself?
A. Yes, sir.
Q. All right. When you placed it there, what did you do then?
A. I returned to my car.
Q. Did you stay in your car or did you leave?

A. I left the car lot.
Q. You left immediately?
A. Yes, sir.
Q. Approximately how long were you there after the motorcycle drove up with Levern Humphries and Gregory Hughes? Approximately how long?
A. I'd say about ten to fifteen minutes at the most.
Q. Ten to fifteen minutes?
A. (Nods head yes.)
Q. Did you talk with Pat Bowers that night?
A. Yes, sir.
Q. Where did you talk with him?
A. I talked with him on the phone and also at the Mazda place.
Q. You talked to him at the Mazda place also?
A. Yes, sir.
Q. All right. Now what did he tell you at the Mazda place?
A. He just told me that when Greg returned to check and make sure that the stuff was there and then leave.
Q. Said what now?
A. He said, check and make sure that Greg had the stuff and then leave.
Q. And then leave?
A. Yes, sir.
Q. Is that what you did?
A. Yes, sir.
Q. All right. Phil, when Gregory Hughes came up on the motorcycle, I understood you to say that he was behind him?
A. Yes, sir.
Q. On the motorcycle?
A. Yes, sir, he was the passenger.
Q. What did he do after Greg stopped?
A. When Greg stopped the bike, Levern headed towards the showroom to look at the cars over there.
Q. Headed to look at the showroom?
A. Yes, sir.
Q. He didn't stick around and talk or anything of that

nature.

A. No, sir.

Q. All right. Now, you indicated, I believe, that you had met Randy Propps sometime prior to that, is that correct?

A. Yes, sir, that's correct.

Q. How long have you known Randy?

A. Just since, about the incident I had with Pat and them. Just since that.

Q. When was that?

A. I'm not sure of the exact date. It was the end of July, I believe.

Q. The beginning of July? So he's known you since July then?

A. Yes, sir.

Q. Phil, I'll ask you if there was ever any conversation that night that you can recall that concerned Levern Humphries that night?

A. No, sir.

Q. Answer any questions he may have for you, please, sir.

CROSS EXAMINATION BY SOLICITOR SALEEBY:

Q. Mr. Culbertson, you called Mr. Propps last night?

A. Yes, sir.

Q. Did you tell him what Mr. Humphries had said to you right before you went up to Clemson?

A. Yes, sir.

Q. Tell the jury what Mr. Humphries told you.

A. He said that if anybody got any hard time it was out of his hands.

Q. Out of his hands?

A. Yeah.

Q. How did you take that to be? Did you take that as a threat?

A. I didn't know how to take it, if you want to know the truth.

Q. Were you scared?

A. Well, a little bit but not really.

Q. A little bit, but not really? Did he call you up and tell

you that?
A. No, sir.
Q. When did he seek you out to tell you that?
A. It was either a couple of days after the incident.
Q. Did he look you up?
A. Yes, sir, he called me.
Q. He called you up?
A. He asked me if he could come over and I said, yeah.
Q. Did he talk with you a while?
A. Yes, sir.
Q. Did he ever threaten you in any way?
A. No, sir.
Q. Say anything else to you?
A. No, sir.
Q. Said if anybody got any hard time it would be out of his hands?
A. Yes, sir.
Q. Has he been trying to get in contact with you any more?
A. No, sir.
Q. Did you know him before this incident?
A. Yes, sir.
Q. How long had you been knowing him?
A. Me and Levern were in school together.
Q. Were in the same grade?
A. Yes, sir.
Q. Go to the same classes?
A. No, sir, me and Levern never had any classes together.
Q. But you knew him pretty well?
A. Not real well. I knew of him.
Q. Scared of him?
A. No, no. Why should I — no reason to be scared.
Q. Not even when he said if he got any hard time it would be out of his hands?
A. Sir?
Q. Now even when he said if he got any hard time it would be out of his hands?
A. No, sir.

Q. And you drove up to the parking lot and parked close to Mr. Bower?

A. Yes, sir. But at the time I didn't know where Mr. Bower was.

Q. And how did you know where to go over to where he was?

A. He whistled.

Q. And did you go over there?

A. Yes, sir.

Q. And what did he tell you?

A. He told me, when Greg comes with the stuff, to look at it and make sure that he had it and then leave and don't come back.

Q. Did Greg come up with somebody else or by himself first?

A. He was by hisself.

Q. Riding a motorcycle?

A. Yes, sir.

Q. Have anything with him?

A. Not to my knowledge.

Q. Have anybody with him?

A. No, sir.

Q. What kind of conversation did ya'll have?

A. He just asked me, you know, if I had the money for it.

Q. And how much money was there supposed to be?

A. Supposed to be $700.00.

Q. Seven hundred dollars?

A. Dollars.

Q. And how much were you supposed to be getting?

A. Two L-B-S.

Q. Two pounds?

A. Yes, sir.

Q. And after you had the conversation with him, where did he tell you he was going?

A. He didn't tell me.

Q. Where did you assume he was going?

A. I had no idea.

Q. He didn't have any marijuana with him when he left there the first time, did he?
A. Not to my knowledge, he didn't.
Q. Well then, when he left, where did he say he was going?
A. He didn't, he didn't tell me where he was going.
Q. Where did you assume he was going?
A. I had no idea.
Q. Did you think he was going to get the marijuana?
A. I figured that's where but I wasn't sure.
Q. Did you show him the money first?
A. No, sir.
Q. You just met him there?
A. Yes, sir.
Q. And then he left?
A. Yes, sir.
Q. And when he came back he had somebody with him?
A. Yes, sir.
Q. And when did you recognize the person who was riding on the bike with him?
A. When they finally came to a stop.
Q. And where did they stop at?
A. About ten feet from my car.
Q. And your car was over there about twenty feet from where Mr. Bower was?
A. Right.
Q. And he stopped right there?
A. Yes, sir.
Q. Did you stay in your car or did you get out?
A. No, I got out.
Q. You got out. And what conversation did you have there?
A. Not really much conversation. I just looked at it, like I said.
Q. Where was it?
A. Greg handed it to me.
Q. And where did he get it from?
A. I don't know.

Q. What did he have it in?
A. A brown bag.
Q. Brown bag?
A. Yes, sir.
Q. Look like a grocery bag?
A. Yes, sir.
Q. Did you have any conversation with him about the quality of it?
A. No, sir, I just looked at it just to make sure it was there.
Q. What did you do with it then?
A. I placed it in the back of a white Mazda pick-up truck.
Q. And what were you supposed to do then?
A. I was supposed to leave.
Q. And what was your purpose for leaving? What were Mr. Hughes and Mr. Humphries supposed to think about you leaving?
A. I was going to get the money.
Q. You were going to get the money. In other words, ya'll rendezvoused and then he went back to get the marijuana and then you, after you saw the marijuana were supposed to leave and go get the money?
A. Yes, sir.
Q. All right. After you left the parking lot, did you see what happened?
A. No, sir.
Q. Did you ever look back?
A. No, sir.
Q. Was anybody ever introduced to you when they got up on the motorcycle?
A. Sir, I don't understand the question.
Q. Did Mr. Hughes introduce Mr. Humphries to you?
A. No, sir.
Q. Did you already know Mr. Humphries?
A. Yes, sir.
Q. Did you have any conversation with him?
A. Nothing more than, hey.
Q. Just hey?

A. Yes, sir.
Q. Did Mr. Hughes turn to him and say, we got some business to do, get out of here, where is the marijuana? What did Mr. Hughes say in front of you?
A. I have no idea.
Q. You didn't hear it?
A. No.
Q. Were you not close enough to hear it?
A. I don't recall him saying anything to him.
Q. You don't recall him saying anything. And, well, when he got off the motorcycle, were you standing right there by him?
A. I was at my car.
Q. You were at your car.
A. Yes, sir.
Q. You could see the motorcycle?
A. Yes, sir.
Q. You could see both of them?
A. Yes, sir.
Q. When is the first time you say you saw a brown paper bag?
A. When I went to meet Greg with it.
Q. Well, he was within your sight the whole time, wasn't he?
A. Yeah.
Q. Isn't that right? All right, and I ask you again, when was the first time you saw any bag?
A. When he come around and handed it to me.
Q. When he handed it to you.
A. Yeah.
Q. And where did he have it from?
A. I don't really recall.
Q. Did he have it in his hands when he rode up?
A. I don't recall that.
Q. Did Mr. Humphries have it when they rode up?
A. I don't recall that either.
Q. You don't recall? Tell me again what Mr. Humphries told you after this event? What did Mr. Humphries tell you two days after this happened?
A. That if any hard time, if anybody got any hard time out

of it, it would be out of his hands.

Q. I understand. Thank you, sir. No more questions. Did you ever tell Mr. Propps here that Mr. Humphries was in Brownsville, Texas?

A. No, sir, not to my recognition?

Q. Not to your recollection? You don't recall that?

A. No, sir.

Q. I'm gone put you — did you ever tell Mr. Bower that Mr. Humphries —

A. No, sir, not that I recall.

Q. — was in Brownsville, Texas?

A. No, sir.

Q. Did you ever tell Mr. Propps or Mr. Bower that you had purchased marijuana from Mr. Humphries before?

A. No, sir.

MR. SUMMERFORD: We object to that now, if Your Honor please.

Q. We're on cross-examination.

COURT: The question is proper. Proceed, Solicitor.

Q. And I put you on notice, I'm gonna contradict you. Thank you, sir.

MR. SUMMERFORD: Come down, Mr. Culbertson. If Your Honor pleases, we have the motorcycle out on the premises, outside. We'd ask that the court permit the jury to inspect that motorcycle.

SOLICITOR SALEEBY: Your Honor, I don't think there's any foundation for it.

COURT: Mr. Summerford, I see no need for that. Everybody's seen a motorcycle, It's been described. You may proceed.

MR. SUMMERFORD: Could we take up a matter out of the presence of the jury, if Your Honor please?

COURT: Let's approach the bench.

(WHEREUPON A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE JURY BUT OUTSIDE THE HEARING OF THE JURY.)

MR. SUMMERFORD: Mr. Humphries, come around, please, sir.

TESTIMONY OF CECIL L. HUMPHRIES

CECIL LEVERN HUMPHRIES, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SUMMERFORD.

Q. Cecil, where do you live?

A. I presently reside in Walterboro, South Carolina. I was living with my grandmother in Prospect.

Q. You live with your father now?

A. Yes, sir, I do.

Q. Who is your father?

A. Cecil Humphries.

Q. Cecil Humphries?

A. Yes, sir.

Q. And I believe they call you Levern, is that correct?

A. Yes, sir, that's correct.

Q. In August of 1981, where were you living?

A. At Prospect.

Q. With whom?

A. I was living with my grandmother. The way we operate our farm is, I help my grandfather. He's not in good health at times and I was helping my father then too, back and forth.

Q. All right, you worked at both places?

A. Yes, sir.

Q. All right, and you do farming?

A. Yes, sir.

Q. How old are you, Cecil?

A. Twenty years old.

Q. You ever been married?

A. No, sir.

Q. Now, on August the 12th, 1981, did you have the occasion to come to Florence, South Carolina?

A. Yes, sir, I did.

Q. Do you remember approximately what time you came to Florence?

A. It was — I would say it was probably about 30 to 45 minutes after dinnertime. I'd say between 12 and 1.

Q. Somewhere between 12 and 1?
A. Yes, sir.
Q. And for what purpose did you come to Florence?
A. I was to come up here to go to Hartsville to Mid-way Tractor Company, a Case Dealership, to pick up some parts for the rear-end of a 1070 Case Tractor.
Q. Was that for your father?
A. Yes, sir.
Q. All right. Did he give you anything to come to Florence with?
A. Yes, sir, he gave me $800 to purchase parts with.
Q. $800 to purchase parts with?
A. Yes, sir.
Q. And you came to Florence for that purpose?
A. Yes, sir.
Q. All right, and how did you get to Florence?
A. I was taken — due to my losing my license — I couldn't drive at the time — and Junior Edwards, a co-worker with me, he works on the farm for us, brought me up here. He drove the pick-up, which I rode with him.
Q. You and Junior Edwards drove a pick-up truck to Florence?
A. Yes, sir, we drove it to Hartsville.
Q. Drove it to Hartsville?
A. Yes, sir.
Q. Now, did you go back home with Junior Edwards?
A. No, sir, I didn't.
Q. Do you have a girlfriend in Florence?
A. Yes, sir, I do.
Q. Who was your girlfriend at that time?
A. Kim Keels.
Q. How long had you been going with her?
A. A little over two years.
Q. A little over two years?
A. Yes, sir.
Q. Ya'll been going steady?
A. Yes, sir.

Q. Now, do you recall the approximate time that you got to Florence that afternoon?

A. I would say, we came to Florence and we didn't go exactly into Florence, we used the little by-pass route to go by Darlington and go to Hartsville. And I'd say we would have passed through Florence probably around two o'clock, probably quarter of two, two o'clock.

Q. All right. And I believe you've got laryngitis today, is that correct?

A. Yes, sir, I have had laryngitis. I had a bad cold.

Q. All right. Now, what did you do after you left the parts place?

A. We left and we came back to Florence and we stopped by MacDonald's, out here on — I'm not sure of the street, it's out here at the Mall, if I'm not mistaken. We came back to get something to eat. So we left there and I was, we just went to eat.

Q. And where did you go after that?

A. Well, I went and I called — I was waiting for my girlfriend. I was hoping she was gonna come home and see me while I was up here because I was supposed to go back to Walterboro and I couldn't drive to the beach because of my license.

Q. All right. Now, after you ate, where did you go?

A. I went out to the Sheraton, out on the, the Sheraton Motel, out here at 95.

Q. Did you go someplace before then?

A. Yes, sir, I stopped by and used the telphone and called a friend of mine and he was supposed to come out and go swimming with me.

Q. And did you put on any swimming clothes?

A. Well, I had on a pair of jeans but under it, instead of wearing shorts, I was wearing a pair of, like swimming shorts because it was hot and working it's a lot cooler that way.

Q. All right, and you were supposed to meet someone at the Sheraton, you say?

A. Yes, sir.

Q. Did you actually go to the Sheraton?
A. Yes, I did.
Q. Did you swim there?
A. Yes, sir.
Q. All right. Do you recall approximately how long you stayed at the Sheraton?
A. It was somewhere around four o'clock when I got there, a little after four, because I had called Kim and she watches a T.V. show, General Hospital, and it goes off at four o'clock. And I called her and I couldn't get an answer and so I figured she was probably watching her T.V. show downstairs. So it was probably, I wou say four or a little after four when I got to the Sheraton.
Q. Now, did the person that you were supposed to meet at the Sheraton come?
A. No, sir, he didn't.
Q. All right. Who were you supposed to meet?
A. John McColl.
Q. And he didn't show up?
A. No, sir.
Q. All right, did you leave the Sheraton?
A. I waited for quite a long time. I waited until around seven o'clock. Because his wife, if I'm not mistaken, doesn't usually get off work until around five to six and she has a baby she takes to the nursery. And he was gonna take his car just as soon as she got home. Cause what he told me, he'd come pick me up and he'd go swimming with me.
Q. Now, how did you leave the Sheraton?
A. On foot.
Q. You walked?
A. Yes, sir.
Q. What direction did you walk?
A. I walked towards Florence.
Q. Towards Florence?
A. Yes, sir.
Q. All right, sir. Tell us what happened, if anything.
A. I walked up to — there's a — I'm not sure of the people

that run it — I think it's the Broach's that run it. I walked up, from the Sheraton I walked all the way up to the first stoplight, right as you come into Florence and there's a Broach's store there. And I walked over to the phone booth and I called John back. And I wasn't able to get any answer.

Q. You called John McColl?

A. Yes, sir. Because I had waited around and he said he'd go there and he never showed up. And I had no way of getting anywhere.

Q. Now, what did you do then?

A. I left word with his wife that if she talked to him to tell him that I was going from there — I'd either be there shooting pool or I was going off to the Sav-Way and I'd call back. It was about another quarter of a mile up the road, half mile.

Q. And you left word with John's wife?

A. Yes, sir.

Q. All right, sir. Now, did you go to the Sav-Way?

A. Yes, sir, I did.

Q. And did you see anybody there that you knew?

A. No, sir, I called back and I wasn't able to get an answer at John's house because I stood around for a few minutes hoping maybe he'd come by or they had gotten together to come and get me.

Q. To come get you?

A. Yes, sir.

Q. Did you see anybody that you knew that drove up?

A. Yes, sir, a little later on, I did.

Q. All right, who was that?

A. Greg Hughes.

Q. Greg Hughes?

A. Yes, sir.

Q. Did you know Greg?

A. Yes, sir, I did. I already knew Greg Hughes.

Q. You'd known him for a long time?

A. Ever since school.

Q. All right. How was Greg travelling?

A. He was on his motorcycle.
Q. Motorcycle? What type motorcycle was it?
A. It's a Gold-Winged 1000 Honda with the windjammer unit on the front.
Q. Now, did you have a conversation with Greg?
A. No, sir, I asked him what way he was going and he said he was going into town, he was going to drink some beer. And I told him I wanted a ride, I was waiting on some people.
Q. You wanted a ride? Did you tell him where you wanted a ride to?
A. I told him into town.
Q. Into town?
A. Yes, sir.
Q. All right. And did he offer to give you a ride?
A. Yeah, he said, hop on.
Q. Hop on?
A. Yes, sir.
Q. Now, Levern, did you see any type paper bag or anything of that nature at that time?
A. No, sir, I didn't.
Q. You did not?
A. It's possible I wouldn't have seen it because I wasn't looking for one.
Q. You were not looking for a paper bag?
A. No, sir, I wasn't.
Q. All right, now describe this motorcycle, if you would, please.
A. It's the largest motorcycle that Honda produces.
Q. The largest one?
A. Yes, sir.
Q. Does it have anything in front of it?
A. Yes, sir. As I said before, to someone whose not familiar with motorcycles, it's a windjammer unit. It covers the gas levers. It's a big ole' fiberglas cover that covers the front, covers up from the top, and also has a windshield up in front of it that comes up to about right here when you ride.

Q. If I was facing you on that motorcycle, could you see if anything was in my lap or anything of that nature?
A. No, sir, not if you were facing me from the distance that you are now.
Q. Anyway, you got on the motorcycle and where did you go?
A. We left and we proceeded down 76 next to town.
Q. You headed towards Florence?
A. Yes, sir.
Q. Did you have any conversation with Greg while you were riding along?
A. No, sir, we wasn't talking.
Q. Didn't talk at all?
A. Not then.
Q. Didn't say anything at all?
A. No, sir.
Q. All right, sir. Did you make any stops?
A. Yes, sir, we stopped at the Cale Yarborough automobile place.
Q. Did you know for what purpose you were stopping there?
A. No, sir.
Q. Did you ask?
A. No, sir.
Q. All right. Now tell me what happened then.
A. I asked him what we were gonna do. He says, we're going to Florence.
Q. He said you're going to Florence?
A. Yes, sir, and he had stepped off and he was talking to someone and I just walked away.
Q. All right, did you know who he was talking to?
A. Yes, sir, I recognized him.
Q. You knew it was Phil Culbertson?
A. Yes, sir.
Q. All right, sir. And did you have any conversation with Phil?
A. No, sir. To the best of my recollection, when I got off the motorcycle I looked at Phil and I said, hey, and I walked

completely to my extreme left.

Q. Where did you go?

A. I walked over to the second or either third car in front of the Mazda place and I was looking, just casually looking at each one. And I was more or less window shopping.

Q. Were these automobiles locked or do you know?

A. No, sir. I would assume they were.

Q. You would assume that they were locked?

A. Yes, sir.

Q. You didn't try any of the doors?

A. No, sir.

Q. Now how many cars would you estimate was out on that lot that night?

A. Twenty.

Q. Twenty?

A. Yeah, they were lined in four's.

Q. They were lined in four's?

A. And it seems like there was two lines of pick-ups on the left. Like was in this illustration, like where these three are on the left here, there would be four there and four behind that and on this side there would be four there and four behind that. And then the ones up in front of the lot, the building, itself.

Q. You say there was probably twenty in all?

A. I would say, sets of four, five times four would be approximately twenty.

Q. All right. Now then what happened?

A. I walked over and I was standing over and Mr. Propps came wheeling around.

Q. Mr. Propps came wheeling around?

A. Yes, sir.

Q. Was he in his car?

A. Yes, sir, he was.

Q. All right, what happened then, if anything?

A. Mr. Propps got out and says I'm, says, Levern, because he had known me.

Q. How did he know you?

A. Well, during the investigation of a murder, they were down near my house investigating a murder and I brought some iced tea and some cups and a jug of iced tea down to them.

Q. You met him then. And that was back when?

A. That was in the Spring. We was setting tobacco. June or something like that. May or June.

Q. And you've known him since that time?

A. I've known him — not really on a personal relationship but I'd met him and four or five of the other officers.

Q. During that period of time?

A. Yes, sir.

Q. Now you say he drove around and did he get out of his car?

A. Yes, sir, he did.

Q. All right. Did he say anything?

A. Yes, sir, he said, I'm with the Florence County Sheriff's Department. He said, don't move.

Q. Don't move?

A. Yes, sir.

Q. Then what happened?

A. I didn't move.

Q. You didn't move.

A. No, sir.

Q. All right, sir. Did he come to you?

A. Yes, sir.

Q. Did he do anything to you?

A. Yes, sir, he placed the handcuff on my left arm and then he moved it around and he placed the other cuff on my right arm behind my back like this.

Q. They were behind your back?

A. Yes, sir.

Q. All right, sir. Did you ask him anything?

A. Yes, sir.

Q. What did you say?

A. I asked him what had I done?

Q. All right, how many times did you ask him that?

A. I said, what's going on, Randy, about four or five times — maybe two or three. It was several.

Q. Several times?

A. Yes, sir.

Q. What's going on?

A. Yes, sir.

Q. And you asked him what had you done?

A. Yes, sir.

Q. Did he say anything to you?

A. No, sir.

Q. All right, what happened then?

A. He placed me — he walked me over to his car.

Q. His car?

A. Yes, sir. And I was standing up beside his car and to my memory, he, I don't think — something makes me think he put me in his car but I believe he put me in Mr. Prosser's car. I believe the door was open on his car and he was gonna put me in his car and then Mr. Prosser was driving in at that time.

Q. Then what happened?

A. He placed me in Mr. Prosser's car.

Q. You were still handcuffed?

A. Yes, sir.

Q. Now, what did Randy Propps do then?

A. He proceeded to where Pat Bower and Greg was.

Q. All right. Where was Phil Culbertson at that time?

A. Phil had left.

Q. He had left?

A. Yes, sir.

Q. Did you see him leave?

A. No, sir. Whenever, I heard something, I think it was what could have been Randy's car cranking up, putting it in gear and leaving to come around. I turned around because I was facing the building at the time. And Greg's car was already out in the center lane of 76 going back to its left next to Florence like this. And I didn't see him standing there and I didn't know what was wrong. And Greg was doing like this here.

Q. You say Greg?
A. Yes, sir.
Q. You talking about Greg Hughes?
A. Yes, sir.
Q. And now did you say his car?
A. No, sir, his motorcycle — no, Phil's car had left.
Q. Phil's car had left?
A. Yeah.
Q. I see. And was it at that time that Randy Propps came around the building?
A. Yes, sir.
Q. All right, sir. Now when they placed you in Mr. Propps' car, what did you see, if anything, that was going on in the other part of the lot?
A. They placed me in Mr. Prosser's car and they were over there talking with Greg, or I would assume talking, they were all three standing together. And they were looking on the motorcycle and in a casual way kind of glancing around.
Q. Now, did Mr. Pat Bowers ever come over to you?
A. Yes, sir, he did.
Q. Did he say anything to you?
A. Yes, sir.
Q. What did he say?
A. He told me I should dig a grave for myself.
Q. Said you should dig a grave for yourself?
A. Yes, sir.
Q. A grave?
A. Yes, sir.
Q. All right. How did he say it?
A. He walked straight over to me and he put his finger in my face and said, boy, you'd better dig a grave. You're in a whole lot of trouble.
Q. All right. What did you say to him?
A. I said, don't be putting your finger in my face until you tell me what I've done.
Q. And did he stay there or did he leave?
A. He just kind of, more or less made a nonchalant sugges-

tion with his hand and turned around and walked away.
Q. He walked away?
A. Yes, sir.
Q. All right. Then what happened?
A. They continued to talk to Greg for a minute and I sit in Mr. Prosser's car. At the time I asked him once or twice what was going on. And he said, they'll tell you in a minute.
Q. Mr. Prosser said, they'll tell you in a minute?
A. Yeah.
Q. All right. Did Mr. Prosser stay there or did he —
A. He stayed there until they returned from talking with Greg. And then they placed Greg in Mr. Prosser's car, and which he left, I assume, to take him to the complex.
Q. All right, sir. Now, what happened after that, Levern?
A. Randy came back over to where I was at.
Q. I ask you, Levern, if Mr. Propps read to you your miranda warnings? Do you know what I'm talking about, miranda warnings? About the right to remain silent and this sort of thing. Did he read to you from a card on that night?
A. No, sir.
Q. Did you ever hear him read to Greg?
A. No, sir.
Q. As far as you know, no one read you your rights?
A. No sir.
Q. All right, did you have a conversation with Mr. Propps?
A. Not a full conversation, no, sir.
Q. All right. Tell me, to the best of your recollection now, from that point on, what you can recall that occurred that night?
A. Well, Randy told me I went to Texas. And he told me that I had went with a friend, so-called Andy Langston.
Q. Did you tell him that you had been to Texas?
A. No, sir.
Q. You never told him that?
A. I had no reason to lie.
Q. All right, sir. Go ahead.
A. He told me that if I wanted to — he told me that, well,

I'm gonna talk to the DEA concerning you. And I asked him for what reason and he said, well, I'm gonna have you extradicted to Brownsville. And I said, for what reason, Randy? He says, well, you can go back there and serve time for doing something wrong. And I said, I don't want to go serve time for something I haven't done. And I said, furthermore, I said, I stand too much to lose, just in more or less my first relationship with my girl.

Q. Now, did you tell him that you'd ever been to Brownsville, Texas?

A. No, sir.

Q. Have you been to Brownsville?

A. No, sir.

Q. Now, was there any other conversation that you can remember that night?

A. He told me that, he told me he might not could convict me in Brownsville but he could smear my name to Brownsville.

Q. Said he could smear your name? All right, sir, did you indicate that you wanted to talk to anyone?

A. No, sir.

Q. Did not?

A. No, sir.

Q. Now, did he threaten you in any way?

A. No, sir, other than putting me into prison in Texas.

Q. Now, did you go with him to a trailer?

A. Yes, sir, I did.

Q. You went with him to a trailer?

A. Yes, sir.

Q. All right. Why did you go to a trailer with him?

A. Because I had known of the person he was speaking of, Andy Langston.

Q. He asked you about Andy Langston?

A. Yes, sir.

Q. All right, what did he ask you about Andy?

A. If I had went to Texas with him.

Q. All right. What did you tell him?

A. No, sir.

Q. Did he ask you anthing else about Andy Langston?
A. He asked me if I knew he was involved in drugs or anything like that, in dealing.
Q. What did you tell him?
A. I told him I hadn't seen Andy in five or six weeks and to my knowledge I didn't know. At that time it was possible. I guess it's possible for anyone to do anything.
Q. All right, sir. Did he ask you if you knew where Andy Langston lived?
A. Yes, sir.
Q. What did you tell him?
A. I told him I did.
Q. All right. Did you tell him whether or not you had ever been to Andy Langston's house?
A. Yes, sir.
Q. Wherever he lived. You told him you had?
A. Yes, sir.
Q. All right, did he ask you to take him to where Andy Langston lived?
A. Yes, sir, he did.
Q. Did you take him?
A. Yes, sir.
Q. Who was with you when you took him?
A. Myself and Investigator Steve Zickafoose, I'm not sure of his title, and Mr. Bower and Mr. Propps.
Q. So there was four of you?
A. Yes, sir.
Q. All right, sir. And where did you take him?
A. I took him out to Terry's Trailer Park in Quinby, Black Creek area.
Q. Terry's Trailer Park?
A. Yes, sir.
Q. All right, And what did you find when you got out there?
A. It took just a moment to locate the trailer.
Q. Took you just a moment?
A. Yes, sir. It was dark, it was late. I'd say maybe 10:20,

10:30, or 11:00, somewhere around in that area. And we drove up and went around and there's so many trailers in there but I went more or less directly to the trailer.

Q. More or less directly?

A. Yes, sir.

Q. All right. What did you find there?

A. Well, we didn't find anyone.

Q. Was there anyone there? Or was it vacant or do you know?

A. I don't know.

Q. You don't know?

A. The last time I'd been there prior to that there was persons living there.

Q. All right. How long had it been since you had been to that trailer? Do you know about?

A. I would say approximately anywhere from three and a half to four to five weeks. I don't remember the day, the exact date.

Q. All right. Three and a half to four to five weeks? Somewhere in that area?

A. Right.

Q. Was the last time that you had been to Andy Langston's trailer?

A. Yeah.

Q. You did not know that there was no one living there at the time?

A. No, sir, my girlfriend, which was with me, her father was part owner of that trailer park and we went out there just looking around.

Q. Had you ever been inside of Andy Langston's trailer?

A. Yes, sir.

Q. You had? How long had that been?

A. That was at the same time.

Q. Same time?

A. Yes, sir.

Q. Cecil, on August the 12th, 1981, did you ever at any time during that day, ever have this in your possession?

A. No, sir.
Q. Either of these?
A. No, sir.
Q. Never have?
A. No, sir.
Q. To your knowledge, have you ever seen those before?
A. No, sir.
Q. When you had a conversation with Randy Propps, did you ever make the statement something about 11 pounds or anything of that nature?
A. No, sir.
Q. Did he indicate to you anything about 11 pound deal or had you ever heard that before until you got in the courtroom?
A. He told me that night that we had, that I had brought a bunch of marijuana, an amount of marijuana back from down there and all this and that and the other.
Q. Oh, he told you that night?
A. Yes, sir.
Q. Did you deny it?
A. I didn't agree with it. I sure did deny it.
Q. Did you ever see Gregory Hughes give any bag, paper bag, to Phil Culbertson?
A. No, sir.
Q. You did not see that?
A. No, sir.
Q. Did you and Gregory Hughes confer, talk, anything, mention anything about marijuana that night or any other night that you can recall?
A. No, sir, I hadn't seen Greg prior to that night for quite a while.
Q. Quite a while?
A. Yes, sir.
Q. Did you have any money on your person, yourself?
A. Sure, I did.
Q. Huh?
A. Yes, sir.
Q. Now, getting back to the conversation now between you

and Randy Propps, when you were being questioned, whose automobile were you in?

A. I was in Mr. Propps until we changed over to Mr. Zickafoose's right here at the Detention Center.

Q. You were in Mr. Propps'?

A. Yes.

Q. And then you came to the Dentention Center?

A. Yes, sir.

Q. All right. Did you request to see Mr. Zickafoose?

A. Yes, I did.

Q. That was your request?

A. Yes, sir.

Q. All right. Now, what did you state to Mr. Zickafoose when you first saw him?

A. I told him that I was all confused. I didn't know what was going on.

Q. You were all confused and didn't know what was going on?

A. Yes, sir.

Q. All right. Did you tell him anything about they were accusing you of anything?

A. Yes, sir, I told him that, I told him that, either I tell them where Andy Langston was residing or I face a possibly, being , my name disantled piece by piece or either being sent back to Texas for something I knew nothing about.

Q. All right. You told him that they had accused you of being in Texas with Andy Langston, is that correct?

A. Right.

Q. Is that right?

A. Yes, sir.

Q. Now, and I believe you've already indicated that you've never been to Texas with Andy Langston, is that right?

A. Right.

Q. Now, I believe your father did wire — you've been to Texas — your father wired you some money there, I believe. But you didn't go with Andy Langston?

SOLICITOR SALEEBY: I object to him leading the

witness.

COURT: Yes, sir, that's leading.

Q. All right, sir.

A. Yes, sir.

Q. Well, let me ask you this: Do you recall the conversation about 11 pounds of marijuana or something of that nature? And you and Andy had split that — do you remember that testimoney from him?

A. Yes, sir.

Q. Now, again, I ask you, have you ever been to Texas, any place in Texas, with Andy Langston?

A. No, not with Andy Langston.

Q. But you have been to Texas?

A. Yes, sir, I've been to California.

Q. All right. You've been to California?

A. Yes, sir.

Q. In fact, I believe your mother resides in California, doesn't she?

A. Yeah, my whole family does, yes. And I have relatives in Texas also.

Q. And you have relatives in Texas?

A. (Nods head yes.)

Q. Answer any questions the solicitor may have for you, Levern, please, sir.

CROSS EXAMINATION BY SOLICITOR SALEEBY:

Q. Ever been to Brownsville?

A. Yes, sir.

Q. You have?

A. Yes, sir.

Q. Where is Brownsville?

A. It's at the most sourthern part of Texas.

Q. Real close to Mexico, isn't it?

A. Yes, sir.

Q. When's the last time you were in Brownsville, Texas?

A. It was, you want a specific date?

Q. Yes, sir. As close as you can tell us.

A. It was probably four or five months ago.

Q. Four or five months ago?
A. Yes, sir.
Q. This October — are you saying it was June, May, when?
A. It was probably around March.
Q. March. Have you been in Brownsville, Texas, since then?
A. I went back one time, since March. Yes, sir, I did.
Q. When?
A. It was on my birthday.
Q. When's your birthday?
A. July 26th.
Q. July the 26th. Who went to Brownsville with you?
A. No one.
Q. Who went to Brownsville with you in March?
A. Buddy Hanna.
Q. Who?
A. Buddy Hanna.
Q. Buddy Hanna. How many days did you stay in Brownsville?
A. Oh, probably around a week.
Q. Around a week? Vacationing?
A. Yes, sir. We went out there looking for a marine job.
Q. Out looking for what kind of job?
A. A marine job.
Q. A marine job. So you went there in March of this year with Buddy Hanna and stayed about a week looking for a marine job. Did you get a marine job?
A. No, sir, I wasn't the one looking for the job.
Q. You were just riding with him?
A. No, he rode with me.
Q. He rode with you. What kind of vehicle did you take?
A. My white Chevrolet convertible.
Q. Your white Chevrolet convertible. When you went out there on your birthday, who went with you?
A. No one.
Q. Did you drive that time?

A. Yes, sir.
Q. This was back in July.
A. Yes, sir.
Q. And what vehicle did you drive then?
A. My convertible.
Q. Your convertible. How long did you stay out there that time?
A. About two or three days.
Q. Two or three days. Do any business with anybody there?
A. No, sir.
Q. What did you do that time?
A. I went out there because Kim and I had a problem and I went to see a girl in Harlingen, which is about thirty miles north of Brownsville.
Q. You went out there to see a girl?
A. Yes, sir.
Q. Who lives thirty miles north of Brownsville?
A. Yes, sir.
Q. But you stayed in Brownsville?
A. No, sir, I went to Brownsville.
Q. You went to Brownsville. But where did you stay on that trip?
A. I stayed at a trailer house in Harlingen.
Q. In Harlingen. Did you go into Mexico?
A. Yes, sir.
Q. Do you do any business in your farming operation with anybody in Mexico?
A. No, sir.
Q. Do you do any business with anybody in your farming operation in Brownsville?
A. No, sir.
Q. Anybody on your payroll in Brownsville?
A. No, sir.
Q. Uh, have you ever corresponded with anybody in Brownsville?
A. Yes, sir.

Q. Who?
A. Arnarldo Jaramillo.
Q. Who?
A. Arnarldo Jaramillo.
Q. Who is he?
A. He's a guy that I know in Brownsville.
Q. He's a friend of yours?
A. Right.
Q. Have you ever corresponded with anybody else in Brownsville?
A. No, sir.
Q. Have you ever sent any money to anybody in Brownsville?
A. Yes, sir.
Q. Who?
A. Vissy — it's a girl.
Q. Who?
A. Vissy — V-I-S-S-Y — it's a girl.
Q. Is that her full name?
A. No, sir.
Q. What's her real name?
A. What's her real name.
Q. What's her last name?
A. It's a mexican name. It's Sausedo, something like that. I don't know. It starts with an "S".
Q. And you've written to her.
A. No, I haven't written to her.
Q. Have you sent her money?
A. Yes, sir.
Q. How much.
A. Three hundred dollars.
Q. $300.00. Have you ever sent money to anybody else out in Brownsville?
A. Yeah.
Q. Who?
A. This money that I sent, the $300.00 —
Q. Yes, sir.

A. — was sent — she got beat up by three persons out there and she was raped and beaten and she needed the money for help and I sent it to Mr. Arnarldo Jaramillo.

Q. You sent it to who?

A. Arnarldo Jaramillo.

Q. Arnarldo Jaramillo.

A. Right.

Q. And you sent him $300?

A. Right.

Q. You ever sent anybody else any money?

A. No, sir.

Q. Are you positive about that? Think about it now.

A. Yes, sir, I did.

Q. You do remember somebody else. Who would that be?

A. I don't believe I have. It's possible I sent some money but I don't think I have.

Q. It's possible. Let me see if I can refresh your memory. You send your money out there by Western Union, don't you?

A. Yes, sir.

Q. Now who was that man you sent $300 to?

A. Arnarldo Jaramillo.

Q. And when was it you sent it out there?

A. I don't remember the date.

Q. Well, let me show you this Western Union Telegraph Money Order Application. Look at that and tell me if that refreshes your memory.

A. No, sir, it was $200.00.

Q. $200.00. When was it you sent him that $200.00?

A. That was, if this date's correct, it was July 14th.

Q. Do you have any reason to believe that that date wasn't correct?

A. No, sir.

Q. And is that your signature?

A. No, sir.

Q. That is not your signature?

A. No, sir.

Q. Did you send that money?

A. Not on that note I didn't.
Q. Are you telling me now that this is not your signature?
A. Yes, sir.
Q. And you did not send this money?
A. I sent the money but that's not my signature. That's not it.
Q. That's not your signature. Your Honor, I'd like to have it marked for identification.

(MONEY ORDER MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT 5.)

Q. Mr. Humphries, with reference to State's Exhibit Number 5, for Identification, I ask you if you admit or deny that you sent $200.00 to Mr. Arnaldo Jaramillo on June the 14th, 1981. Do you admit that or deny it?
A. I admit sending the money but —
Q. Do you admit sending it Western Union?
A. Yes, sir.
Q. And what Western Union office did you use?
A. I think I used the Florence office. I'm not sure.
Q. And where is the Florence Office?
A. At the bus station.
Q. All right, and I ask you again, who else in Brownsville, Texas, have you sent money to?
A. I sent some money to a friend — I'm not sure if it was in Brownsville. It could have been in another part of Texas. And I sent money to a Phillip Cockfield out there.
Q. Phillip Cockfield. How much did you send him?
A. Three hundred dollars.
Q. Did you ever send anybody a thousand dollars?
A. Yes, sir. I think I sent a Mr. Mims a thousand dollars out there.
Q. Let me show you this and ask you if; that refreshes your recollection.
A. I remember sending a thousand dollars. I remember doing this but that's not my signature on this line.
Q. Your Honor, I'd like to have it marked for identification.

(MONEY ORDER MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT 6.)

Q. Now with reference to State's Exhibit Number 6, for identification, can you tell us why you sent Maria Sausedo a thousand dollars in Brownsville, Texas, on June the 16th, 1981.

A. Yes, sir.

Q. Tell us what that's about.

A. It's the same thing concerning Vissy getting beat up.

Q. Well, one time you sent it to one fellow —

A. Right.

Q. And the other time you sent it to somebody else?

A. Right.

Q. And you sent a thousand dollars in June and you sent two hundred dollars in July, is that correct?

A. Right.

Q. Can you tell us why thirty seconds ago you couldn't remember sending a thousand dollars out there?

A. I didn't tell you I didn't send a thousand dollars out there.

Q. Did you not, until I showed you this, tell us you couldn't recall?

A. Yes, sir, I told you I did it before you did.

Q. You did?

A. Yes, sir.

Q. So now you recall sending twelve hundred dollars out there. The farming business is good in Prospect, isn't it?

A. It's good if you have somebody that needs it.

Q. And you walked away from Prospect on the 12th with $800 in pocket, is that right?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. You had more than that on you?

A. Yes, sir.

Q. How much did you have?

A. A thousand and seventy.

Q. A thousand and seventy?

A. Yes, sir.
Q. And you were riding with somebody else?
A. Yes, sir.
Q. And you went over to Hartsville?
A. Yes, sir.
Q. To buy farm parts?
A. Yes, sir.
Q. And you bought farm parts?
A. No, sir.
Q. Didn't buy farm parts.
A. No, sir, they didn't have them. I had to order them.
Q. You had to order them.
A. Yes, sir.
Q. You didn't pay anything then?
A. No.
Q. And then your ride, Mr. Edwards, just sort of disappeared somewhere while you hung around in the Sheraton?
A. No, sir, he didn't disappear. He went back to work.
Q. He went back to work. And you hung around up here?
A. Yes, sir.
Q. And you were gone get back to Prospect the best way you could?
A. No, sir, not the best way I could. My friend, John, was gonna take me.
Q. Your friend, John.
A. Right.
Q. Who doesn't live at the Sheraton Inn but was gone meet you at the Sheraton Inn?
A. Yes, cause he doesn't have a pool at his house.
Q. All right. And so ya'll were gone swim at the Sheraton and you just happened to be walking back on Highway 76 in your shorts.
A. Yes, sir.
Q. You must have given Mr. Edwards your street clothes, right?
A. No, sir.
Q. So there you were, twenty years old, wearing a pair of

shorts with no shoes, no shirt, with $1100 in your pocket?

A. Well, if you were fixing to go home and you were going swimming, what more would you need?

Q. And then, according to your testimony, Mr. Hughes, who you didn't know at the time, just happened to be on his way to a drug deal and just casually picked you up and took you out there so you could be a witness, is that your testimony?

A. He picked me up, yes, sir.

Q. And you didn't know what was going on?

A. No, sir.

Q. And then, after you got there, this man right here, this demon that you had gotten all the lemonade for and the ice tea and the cups, told you he was gone put you in jail?

MR. SUMMERFORD: You Honor, that's improper cross examination.

Q. It's his testimony.

MR. SUMMERFORD: This demon and this sort of crap?

COURT: All right, sir, don't use the word, demon, Solicitor. Proceed.

Q. This officer right here, who's been lying on you so bad, this one right here, the one that you brought ice tea to and cups?

A. No, sir.

Q. He's the one that told you that you'd been to Brownsville?

A. Yes, sir.

Q. But you had never been to Brownsville?

A. I didn't say I'd never been to Brownsville. At that incident —

Q. He's the one that told you you bought the marijuana. You didn't tell him that?

A. No, sir.

Q. You denied that.

A. Yes, sir.

Q. And you deny telling him now and you deny telling him then that you split it with Andy Langston?

A. Yes, sir.

Q. You deny that you got 11 pounds and you busted it down and each of you split what was left after the stem was gone?
A. Yes, sir.
Q. You deny that?
A. Yes, sir.
Q. You deny telling him you needed the money so that you could get down to the beach to see your girlfriend.
A. Yes, sir.
Q. I take it things were patched up now. That after that trip out to Brownsville and that little town by Brownsville that everything got all right and you and your girlfriend got back together?
A. No, sir, we hadn't got back together at all.
Q. You hadn't. But you didn't have any marijuana on you that day, did you?
A. No, sir.
Q. You know what marijuana looks like, don't you?
A. Sure.
Q. That's marijuana, isn't it?
A. I'd assume so, yes, sir.
Q. You've seen marijuana before, haven't you?
A. Yes, sir.
Q. Use marijuana?
A. Yes, sir. Not now.
Q. Not now.
A. No, sir.
Q. Stopped now. Did you have anything on you that evening?
(No Response.) Did you have any drugs on you?
MR. SUMMERFORD: If Your Honor pleases, that's improper.
Q. I think he's opened the door by getting on the stand.
MR. SUMMERFORD: No, sir.
Q. Yes, sir.
COURT: Ladies and Gentlemen, I'll ask you to please go to the juryroom.
(WHEREUPON THE FOLLOWING TAKES PLACE

OUTSIDE THE PRESENCE OF THE JURY.)

SOLICITOR SALEEBY: Your Honor, the Defendant has taken the stand, and I think, opened the door as to his involvement on this evening. We have a right to ask him what transpired. He has directly said that Mr. Propps' testimony was a fabrication and that Mr. Propps treated him badly. And two reasons, for the fact that he had drugs on him and, number two, to show that Mr. Propps did not charge him with what he could have charged him with, an additional offense. We think it's highly relevant under these particular circumstances.

COURT: Mr. Summerford?

MR. SUMMERFORD: If Your Honor pleases, we approached the bench.

COURT: Yes, sir, I ruled that it was inadmissable and I did not let the State go into it. Now, your Defendant has taken the stand and the Defendant has made certain statements and I want to hear from you how come it's not now a proper issue before the jury.

MR. SUMMERFORD: Well, let me put it in the record, if Your Honor pleases, that we stood before the bench and we discussed the situation, that there was some other substance found on this Defendant at the time. And as I recall the solicitor's statement, I'm gonna do you a favor. I am not gonna bring that up during this trial.

COURT: Also, I told him he was not gone bring it up during the trial and he did not during the State's part. But once you have opened the door — and, of course, you were aware of all this ahead of time. And once you have opened the door, that's the part that's giving me the concern.

MR. SUMMERFORD: All right. Now, it's my understanding then that the Court is gonna permit him to testify as to some substance without any identification, and prejudice this jury — cause we're gone move for a mistrial already. We think that the remarks in front of this jury has already prejudiced this Defendant to the point that if you start talking about any other kind of drug other than pot, you know what

the reaction is in this county and this State. Now we think that the fact that he's already brought it up and there is no charge whatever in this indictment. Now there was a possibility, had I not been told that this Defendant would not be confronted with that, that I might not have put him up on the stand. But I was told, I'm gonna do you a favor. I am not gonna bring that up during this trial.

SOLICITOR SALEEBY: I did not use those words.

MR. SUMMERFORD: Well, that's as I recall it.

SOLICITOR SALEEBY: Your recollection is false.

MR. SUMMERFORD: Please let me finish. That's as I recall it. And had he not said that, then I possibly might not have put him on the witness stand. I was given, led to believe, that he would not bring it up during this trial. And I think the further grounds that there has been no identification, no chemist has gotten on this witness stand during this trial and testified what that substance was. It could have been aspirin. It could have been anything else. And we don't think that it's proper and it has no probative value except for that fact that it's gonna prejudice that jury.

SOLICITOR SALEEBY: This officer told that man he wasn't gonna charge him because he was truthful with him. Now this man is saying this officer is a liar. To keep it away from the jury is a fraud on them.

MR. SUMMERFORD: Might I say, if Your Honor pleases, that you can't get on the witness stand and tell the truth?

MR. SUMMERFORD: That's what I'm saying, if Your Honor pleases. I know he's calling him a liar.

COURT: It's definite we haven't gotten the truth out of one side or the other. We've got a direct conflict. Anything further, Gentlemen? Anything further from either side?

SOLICITOR SALEEBY: Nothing from the State, Your Honor.

COURT: Solicitor, I do not remember the facts as Mr. Summerford has quoted it. I'm gone give his client the benefit of every doubt. I'm gone rule that it's inadmissable.

SOLICITOR SALEEBY: I understand, Your Honor.

COURT: Anything further outside the presence of the jury?

MR. SUMMERFORD: If Your Honor pleases, how about my motion — I don't see how in the world this man can get a fair trial now that a statement has been made about some other substance.

COURT: Mr. Summerford, I've bent over backwards. Frankly, I believe it's admissable. I can find no prejudice. But I'm giving you client the benefit of every doubt. And I tell you, that doubt is small but I'm giving it to you. All right, motion for mistrial is denied.

MR. SUMMERFORD: Can we take a few minutes recess?

SOLICITOR SALEEBY: I'm not through cross-examining this witness. I'd like to get through cross-examining this witness before we recess.

COURT: Are you ready to proceed, Mr. Summerford?

MR. SUMMERFORD: I'd like to be excused for just a moment.

COURT: All right, we'll be at ease while we wait for you. Give us a jury.

(WHEREUPON THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE JURY.)

COURT: Ladies and Gentlemen, just disregard the last question. Give it no consideration whatsoever. Solicitor.

CROSS EXAMINATION BY SOLICITOR SALEEBY (CONT'D.)

Q. Now, Mr. Humphries, you told us that you had $1,070 in your pocket?

A. Yes, sir.

Q. Where did you get the extra $30.00 to make it $1,100 when you got to the Detention Center?

A. I had $1100 when I got to the Detention Center?

Q. Yes, sir. Or did you? Did you have more or did you have less?

A. I had $1,070.00.

Q. $1,070.00.
A. Yes, sir, when I checked in at the Detention Center.
Q. In your pocket on your hip?
A. Yes, sir.
Q. It's your testimony that you ran into Mr. Hughes totally by accident?
A. Yes, sir.
Q. You've never seen that marijuana before in your life?
A. No, sir.
Q. Don't know where that marijuana came from?
A. No, sir.
Q. You had no conversation with Mr. Hughes about it?
A. No, sir.
Q. You never saw it in his possession?
A. No, sir.
Q. You never saw a brown paper bag?
A. No, sir.
Q. There was never a brown paper bag between you and him?
A. No, sir.
Q. When you got there and you saw Phil sitting over there, you didn't ask any questions about what are you guys doing meeting in a parking lot at 9:00 on a night? You asked no conversation?
A. No, sir. He just saw Phil there.
Q. You thought it was an accidental meeting?
A. I didn't know.
Q. Mr. Hughes didn't tell you where he was going or what he had with him?
A. No, sir.
Q. He just said it was fine for you to come along and ride with him?
A. Yes, sir. He told me he'd give me a ride.
Q. And every statement that you made after that, as Mr. Propps and Mr. Bower have testified is untruthful, is that correct?
A. I didn't discuss it.

You didn't make no statements?

MR. SUMMERFORD: If Your Honor please —

A. I didn't make any statements as to my admission of me having possession nor being involved in the getting of the marijuana, no, sir.

Q. You deny telling them that you were there with Andy Langston?

A. Right, sir.

Q. You deny telling them you got 11 pounds?

A. Right, sir.

Q. You deny telling him it was split up because you had five pounds of stems?

A. Yes, sir.

Q. You deny saying that you needed the money to go down to the beach?

A. Yes, sir.

Q. You deny telling them that you had been to Langston's trailer and you knew where he hid the marijuana?

A. No, sir. I knew where his trailer was.

Q. Did you kno where his marijuana was?

A. No, sir, not exactly. I knew it was in his trailer somewhere.

Q. You knew Langston kept marijuana?

A. I knew he used it.

Q. You knew he used it?

A. Not for a fact but I knew, yes.

Q. You had seen it in his trailer?

A. No, sir.

Q. Do you deny telling them you'd seen it in his trailer?

A. I'd seen him with it. I don't know if it was in his trailer.

Q. Did you tell them that you had some more but it was at your girl's trailer that you were living with?

A. I wasn't living with anyone.

Q. Do you deny telling them that?

A. Yes, sir.

Q. Do you deny telling them you had more marijuana?

A. Yes, sir.

Q. Do you deny telling them that you wouldn't let them know where it was because you wanted to protect this girl?
A. No, sir.
Q. Were you staying in a trailer with any girl?
A. No, sir.
Q. You deny that too?
A. Yes, sir.
Q. That's all the questions I have.

•••

TESTIMONY OF OFFICER STEVE ZICKAFOOSE

H. STEVEN ZICKAFOOSE, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY SOLICITOR SALEEBY:

Q. Mr. Zickafoose, tell the members of the jury who you work with?

A. I work with the Florence County Sheriff's office.

Q. Now, Mr. Zickafoose, have you been previously called by me or anybody else as a witness in this case?

A. No, I haven't.

Q. Were you in the courtroom when Levern Humphries testified?

A. During part of his testimony I was, yes, sir.

Q. All right, sir. Let me ask you to tell the members of the jury how long you've been in law enforcement in this county?

A. Since July 13th, 1977.

Q. And do you work with any particular division now of the Sheriff's Department?

A. Yes, sir, I work with the Criminal Investigation Division.

Q. And how long have you been an investigator?

A. I believe the 5th of next month will be a year.

Q. About a year.

A. Yes, sir.

Q. Do you know the Defendant in this case, Levern Humphries)

A. Yes, sir, I do.

Q. How long have you known him?

A. I first met him about two years ago. I was on patrol and I stopped a car which he was driving one night.

Q. So you had known him for two years?

A. Yes, sir.

Q. Did you know each other or do you know each other on a first-name basis?

A. Yes, we do.

Q. And did you have an occasion to have any contact with

him on august the 12th of this year?
A. Yes, sir, I did.
Q. When did you first have contact with him?
A. Sometime in the afternoon Levern called me on the telephone.
Q. At about what?
A. I had been trying to get in touch with Levern.
Q. Was it about an unrelated matter?
A. Yes, sir, it was.
Q. Was your conversation in the afternoon about an unreated matter?
A. Yes, sir, it was.
Q. Did you have the occasion to see him later that day, that evening?
A. That night I did, yes, sir.
Q. Where did you see him?
A. In the parking lot here at the courthouse.
Q. About what time was it?
A. I believe it was around ten o'clock.
Q. Tell the members of the jury the circumstances under which you met.
MR. SUMMERFORD: If Your Honor please, what is this in reply to, sir?
Q. Your Honor, he's made statements as to what he told Mr. Zickafoose and we're getting what Mr. Zickafoose —
COURT: All right, it's permissable.
A. That night I received a radio transmission from Investigator Propps to meet me in the parking lot here at the courthouse. He stated that he had a subject in the car that wanted to talk with me.
Q. He said that Mr. Humphries wanted to talk with you?
A. That's correct.
Q. And requested you by name?
A. Well, by number, 121.
Q. All right. Go ahead.
A. I returned to the parking lot and Mr. Humphries got out of Investigator Propps' car and got into my car. And he

started talking with me and I advised him, I told him that I knew that we had a relationship that was quite friendly but I was in law enforcement and that I was gonna have to give him his rights before he started talking with me. So I advised him of his rights.

Q. And what rights did you advise him of?

A. I advised him he had the right to remain silent. That anything that he said could be held against him in a court of law. I advised him that he had a right to have an attorney present at that time or at any time during questioning. If he could not afford an attorney the court would appoint one for him without cost to him. That if he decided to make a statement, if he wanted to discontinue making that statement at any point he could do so and I would ask him no further questions.

Q. And what did Mr. Humphries indicate he wanted to do at that time?

A. He indicated he wanted to try, wanted me to help him get out of trouble.

Q. And did he indicate whether or not he wanted to talk to you?

A. Yes, sir, he did.

Q. And tell us what he told you.

A. He stated that he had been in Brownsville, Texas, and his car had got stolen. And that through some deal he wound up with a thousand dollars and 11 pounds of marijuana to replace his car.

Q. Did he give you any other details as to the thousand dollars or 11 pounds of marijuana? Did he have any further conversation with you about as to who else was involved or under what circumstances?

MR. SUMMERFORD: If Your Honor please, the same exceptions now, if Your Honor please. This is not in reply.

Q. Yes, sir.

COURT: All right, sir. Your exception is noted. You may proceed, Solicitor.

Q. Go ahead and tell us what he told you.

A. All right. I don't know if we had any more conversation just he and I by ourself or not. I believe Investigator Propps was gassing up his car at that time. He parked his car and he and Mr. Bower got in my car along with Mr. Humphries. We rode to Terry's Trailer Park to look at a trailer where Andy Langston was supposed to be staying. This marijuana that Levern had gotten was supposed to have been split between himself and Andy Langston.

Q. Did he ever tell you that he was an innocent hitchhiker that just got on a motorcycle?

MR. SUMMERFORD: This is his witness, if Your Honor pleases.

COURT: Yes, sir, you're leading now.

Q. Did he ever deny knowledge of the marijuana?

A. No, sir.

Q. Fine. Please answer any questions that Mr. Summerford has.

CROSS EXAMINATION BY MR. SUMMERFORD:

Q. Mr. Zickafoose, you say you gave him his miranda warnings?

A. Yes, sir.

Q. And was that exactly what you said to him, what you've testified to today?

A. About his miranda warnings?

Q. Yes, sir.

A. Yes, sir.

Q. Did you say anything else?

A. No, sir.

Q. Are you sure you didn't say anything else?

A. About his rights?

Q. Yes, sir.

A. No, sir.

Q. You're positive?

A. The rights that I stated to Mr. Saleeby is what I gave him.

Q. All right, sir. Did you tell him anything else?

A. No, sir.

Q. Are you absolutely sure, now?

A. I don't recall saying anything else to him, no, sir.

Q. If Your Honor please, we move to strike that testimony. He hasn't complied.

COURT: On what grounds.

Q. With the miranda warning.

COURT: He said he gave him the full miranda warnings.

Q. He said that that's all he had given him, that if he didn't have an attorney, if he wanted to stop at any time he could do so and he wouldn't ask him any further questions. That's all he asked him. Nothing else. I think we'd better take it out of the presence of the jury.

COURT: No, sir. I'm ready to rule. Your exception is noted. You may proceed.

Q. All right, let me ask you this: Did you use, you said that you were in law enforcement, right?

A. Yes, sir.

Q. And that's all you said to him?

A. I told him I realized he had called me there because we had a friendly relationship. And he wanted to talk with me.

Q. Did he say anything about being off the record or anything of that nature?

A. No, sir.

Q. Didn't say that, did he?

A. No, sir.

Q. All right. And didn't he tell you that he was under arrest, that he didn't have any idea what he was under arrest for, or what was going on?

A. No, sir.

Q. Did he say anthing, words to that effect?

A. Not that I can recall, no, sir.

Q. Well, can you recall? Can you recall exactly what was said specifically that he stated that he had been to Brownsville, Texas?

A. Yes, sir.

Q. Did he not say that he was accused that night of having

been in Brownsville, Texas, and with Andy Langston?
A. I don't know if he stated that he had been accused or not but during our journey to Terry's Trailer Park it come up, yes, sir.
Q. It did come up, did it?
A. Yes, sir.
Q. And they were accusing him of having been out to Brownsville, Texas, within seven to nine days from that date with Andy Langston. And didn't he tell you that that wasn't so? Isn't that what he said, now, Steve?
A. Mr. Summerford, I don't remember that. No, sir, I don't.
Q. All right. Could he have said that?
A. I guess he could have but I don't remember him saying it, no, sir.
Q. But if he had been out, it stands to reason if he'd been out in Brownsville, Texas, with Andy Langston within seven to nine days, he would have known, would he not, whether or not he lived at that trailer? You didn't think he was pulling your leg when he took you out to that trailer where he did live, did you?
A. You talking about Andy Langston?
Q. yes, sir.
A. No, I didn't think he was pulling my leg.
Q. And you knew he was being sincere because he was in the presence of a friend, didn't you?
A. Well, I thought he was, yes, sir.
Q. And you knew, and you reminded him of the fact that you were his friend, didn't you? Isn't that true, sir?
A. Yes, sir, at the beginning of our conversation.
Q. There's no question about that. And didn't he give you the appearance that he wanted to cooperate with the law enforcement fully and do everything that he could to help them? Isn't that the apperance that he gave you?
A. He stated that was his intentions, yes, sir.
Q. That was his intentions.
A. Yes, sir.

Q. Thank you, so much.

REDIRECT EXAMINATION BY SOLICITOR SALEEBY:

Q. Just one question, Mr. Zickafoose. Did he tell you that he was accused of being in Brownsville or getting marijuana or that he had been to Brownsville and gotten marijuana?

MR. SUMMERFORD: Now this —

COURT: It's in the alternative, you may proceed.

A. He told me he had been to Brownsville and gotten marijuana.

Q. Thank you, sir.

COURT: Anything further, Mr. Summerford?

MR. SUMMERFORD: Nothing further.

COURT: You can come down.

***

VERDICT OF CECIL LEVERN HUMPHRIES

CLERK: Ladies and Gentlemen of the jury, have you agreed upon a verdict?

FOREMAN: Yes, we have.

CLERK: Indictment Number 81-GS-21-708, The State versus Cecil L. Humphries, indicted for Conspiracy to possess marijuana with intent to distribute and possession of marijuana with intent to distribute. Verdict: Count one, we find the Defendant guilty of count one. Two, we find the Defendant guilty of count two. Signed D. S. Morris, Foreman. Mr. Foreman and Ladies and Gentlemen of the jury, are these your verdicts so say you all? (ALL JURORS ANSWERED IN THE AFFIRMATIVE.)

COURT: Ladies and Gentlemen, I thank you for your presence here this week. You've certainly been very diligent.

***

SENTENCE OF CECIL LEVERNE HUMPHRIES

As to Cecil L. Humphries, on count one, the sentence of the court is that the Defendant, Cecil L. Humphries, on the charge of conspiracy, be committed to the custody of the South Carolina Department of Corrections or the Florence Detention Center for a period of one year. This is to be consecutive to any sentence imposed. On count two, the sentence of the court is that the Defendant, Cecil L. Humphries for possession of marijuana with intent to distribute, be committed to the custody of the South Carolina Department of Corrections or the Florence Detention Center for a period of eight years. This is to be consecutive. Mr. Humphries has a combined sentence of nine years to serve. Mr. Hughes, you have six years to serve. Any questions as to sentence?

EXCEPTIONS RAISED BY PETITIONER ON APPEAL TO SOUTH CAROLINA SUPREME COURT

EXCEPTIONS
(10, 11, and 12)

10. That His Honor erred in allowing the testimony of Officer Zickafoose in reply as to statement alleged to have been made by the Appellant in that the testimony of Officer Zickafoose was not in reply to Appellant's defense.

11. That His Honor erred in not allowing an in camera hearing on the issue of whether Officer Zickafoose properly advised the Appellant of his Miranda warning in that the Appellant is entitled to a hearing out of the presence of the jury on that issue as a result of constitutional and case law.

12. That His Honor erred in not granting Appellant's Motion for a mistrial in that Officer Zickafoose's testimony was highly prejudicial, improper reply testimony.

PETITIONER'S BRIEF TO SOUTH CAROLINA SUPREME COURT — QUESTION I REGARDING CONSTITUTIONAL GROUNDS OF APPEAL

BRIEF OF APPELLANT

QUESTION NUMBER ONE

Were the Appellant's U.S. Constitutional Fifth and Sixth Amendment rights protected? (Exceptions 1, 2, and 11)

The State must meet a heavy burden to prove a person in custody knowingly and intelligently waived his privilege against self incrimination and his right to counsel. *State vs Pendergrass* 270 S.C.1, 239 S.E. 2d 750. It is the duty of the trial Judge to evaluate the evidence and determine whether the confession was or was not voluntary. *State vs Rabon* _____ S.C._____, 272 S..E. 2d 634. It cannot be disputed that the testimony of Officer Zickafoose concerning certain alleged statements made by the Appellant was extremely detrimental to Appellant's defense. (TR p. 227 line 1 through TR p. 229 line 7; TR p. 231 line 20 through TR p. 233 line 21). Appellant's request for a hearing out of the presence of the jury to determine when Appellant had made a valid waiver of his rights was refused by the trial court and the trial court in the presence of the jury found the waiver valid. (TR p. 230 line 12 through line 23). The Appellant was seriously prejudiced because in ruling in the presence of the jury the trial Judge made a statement on the facts of the case that was the responsibility for the jury to determine, was the Appellant's alleged statement freely and voluntarily made after notice of his rights? The friendly relationship between Officer Zickafoose and Appellant is of concern. (TR p. 231 line 2 through line 5). The trial court's refusal to go into the matter out of the presence of the jury denied Appellant of the right to have the Court determine the threshold question before presentation of the statements to the jury. Appellant testified that he had never been given Miranda Warnings. (TR p. 31 line 13 through line 23). Appellant was entitled to be heard on

the issue of waiver and the failure of the trial court to allow the hearing entitles Appellant to a new trial or in the alternative to have the matter remanded for a determination by the trial court.

82-1310

Office-Supreme Court, U.S.
FILED
APR 4 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

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October Term, 1982

No.

CECIL LEVERN HUMPHRIES, Petitioner,

versus,

STATE OF SOUTH CAROLINA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT.

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QUESTION PRESENTED

I.

Did the trial court err in violation of Petitioner's rights under the United States Constitution by denying the Petitioner's motion to strike the testimony of Officer Zickafoose presented during the State's case in reply?

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OPINION BELOW

The opinion of the South Carolina Supreme Court is reported in Memorandum Opinion No. 82-MO-323, filed November 9, 1982, as reproduced in Petitioner's Appendix A at pages 11-12.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTION PRESENTED

I.

Did the trial court err in violation of Petitioner's rights under the United States Constitution by denying the Petitioner's motion to strike the testimony of Officer Zickafoose presented during the State's case in reply?

ARGUMENT

I.

The trial court did not err in violation of Petitioner's rights under the United States Constitution by denying the Petitioner's motion to strike the testimony of Officer Zickafoose presented during the State's case in reply.

The Petitioner's basic contention in his argument is that the trial court erred by failing to hold an in camera

hearing requested by the Petitioner during the State's case in reply in violation of Petitioner's Fifth Amendment rights. The Respondent would submit that since the testimony was submitted in reply by the State to contradict and impeach the testimony of the Petitioner, the trial court did not err by failing to hold an in camera hearing concerning the constitutional right of Petitioner to remain silent and against self-incrimination since such rights do not prevent the use of prior statements of the Petitioner to impeach or contradict his testimony. Further the Respondent would submit that since the request for a hearing came only as part of a motion to strike the entire testimony which was made only after the direct examination and during the cross-examination of the witness, the

trial court did not err by denying the motion or failing to hold a hearing.

The record reflects that an in camera hearing was held concerning the statements made by Petitioner to Officers Bowers and Propps, which the court ruled were freely and voluntarily made. (Petition, p. 35). The Petitioner then testified and denied again ever being read or informed of his constitutional rights. (Petition, p. 96). The Petitioner admitted talking to Officer Zickafoose and gave his version of the conversation, which did not include any incriminating statements. (Petition, pp. 100-101). He then denied ever making any incriminating statements during cross-examination. (Petition, pp. 115-117). Officer Zickafoose then testified in reply that during his discussion with Petitioner, he had

informed the Petitioner of his constitutional rights and that the Petitioner made certain incriminating statements. (Petition, pp. 120-122). After the direct examination of Officer Zickafoose, during cross-examination the following occurred:

> Q. If Your Honor please, we move to strike that testimony. He hasn't complied.
>
> COURT: On what grounds?
>
> Q. With the Miranda warning.
>
> COURT: He said he gave him the full Miranda warnings.
>
> Q. He said that that's all he had given him, that if he didn't have an attorney, if he wanted to stop at any time he could do so and he wouldn't ask him any further questions. That's all he asked him. Nothing else. I think we'd better take it out of the presence of the jury.
>
> COURT: No, sir. I'm ready to rule. Your exception is noted. You may proceed. (Petition, p. 123).

It is proper for the State in a

criminal case to introduce in rebuttal any competent evidence which tends to explain, contradict or contravene evidence introduced by the defense. State v. McDowell, 272 S.C. 203, 249 S.E.2d 916 (1978); State v. Sharpe, 138 S.C. 58, 135 S.E. 635 (1926); State v. Johnson, 137 S.C. 7, 133 S.E. 823 (1926); 23 C.J.S. Criminal Law §1050. Where the defendant takes the stand and testifies, he is under an obligation to speak the truth. The shield of the Fifth Amendment right to remain silent and against self-incrimination does not extend to evidence introduced to impeach or to contradict the testimony of the defendant. Harris v. New York, 401 U.S. 222, 91 S. Ct. 643, 28 L.Ed.2d 1 (1971); United States v. Havens, 446 U.S. 620, 100 S. Ct. 1912, 64 L.Ed.2d 559 (1980); State v. Mercado, 263 S.C. 304, 210 S.E.

2d 459 (1974). In this case the defendant had testified and the testimony of Officer Zickafoose was introduced to contradict the testimony of the defendant. The protections of the Fifth Amendment did not extend to the statements of the defendant used to contradict his testimony, thus the trial court did not err by not holding an in camera hearing to determine whether the statements were made in derogation of those rights.

Further, as the record reflects, the request for a hearing was made after the direct testimony of the witness and as part of a motion to strike. The testimony of the witness concerning the events surrounding the statements were already before the trial court and the jury. There was no abuse nor was there any necessity to hold a hearing.

The Respondent respectfully submits that the holding of the South Carolina Supreme Court in this case did not deny the Petitioner any of his constitutional rights, and that the Petitioner is not entitled to a Writ of Certiorari.

CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

T. TRAVIS MEDLOCK
Attorney General

HAROLD M. COOMBS, JR.
Assistant Attorney General

ATTORNEYS FOR RESPONDENT.